

Dobrich, et al.
Reginald Helms

v.
C.A. # 15-120 (JJF)

Indian River School District, et al.
October 11, 2006

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3

4 MONA DOBRICH and MARCO DOBRICH, individually and
As parents and next friend of ALEXANDER DOBRICH,
5 SAMANTHA DOBRICH, JANE DOE and JOHN DOE,
individually and as parents and next friend of
6 JORDAN DOE and JAMIE DOE,

7 Plaintiffs

8 vs. Civil Action
9 INDIAN RIVER SCHOOL DISTRICT, ET AL., No. 15-120

10 Defendants
11 -----
12

13 DEPOSITION OF REGINALD HELMS, taken
pursuant to notice at the Indian River School
14 District, 31 Hosier Street, Selbyville, Delaware,
beginning at 3:32 p.m. on October 11, 2006 before
15 David A. Sroka, Registered Professional Reporter and
Notary Public.

16
17 APPEARANCES:

18 THOMAS ALLINGHAM, ESQUIRE
RICHARD HORVATH, ESQUIRE
19 BRIAN LENHARD, ESQUIRE
P.O. Box 636
20 Wilmington, Delaware 19899-0636
For the Plaintiffs
21
22

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JASON P. GOSSELIN, ESQ.
JARROD D. SHAW, ESQ.
Drinker Biddle & Reath LLP
One Logan Square
Philadelphia, Pennsylvania 19103-6996
For the Defendants

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1 member in attendance.
2 REGINALD HELMS,
3 The Witness herein, called for examination by
4 the Plaintiff, having been duly sworn to tell the
5 truth, the whole truth, and nothing but the truth,
6 was examined and testified as follows:
7 EXAMINATION BY MR. ALLINGHAM:
8 Q. I've put before you the top document is
9 Plaintiff's Exhibit 30. Would you turn to the last
10 page of that exhibit, please?
11 In the second column from the right -- I
12 should give you some background. This is an article
13 from Delaware Beach Life, have you ever read it
14 before?
15 A. No.
16 Q. There is a picture of you on the front
17 page, is that correct?
18 A. That's me.
19 Q. Not the best picture of all time?
20 A. Well --
21 Q. In the second column from the right there
22 is a quotation from the Reverend Jerry Fike, do you
23 know who Mr. Fike is?
24 A. Yes.

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1 MS. DUPHILY: This is the
2 videotape deposition of Reggie Helms. This
3 deposition is being taken on behalf of the
4 Plaintiff in the matter of Dobrich, et al.
5 versus Indian River School Board, et al,
6 case number 15-120. The deposition is
7 being held at 31 Hosier Boulevard,
8 Selbyville, Delaware. We are going on the
9 record on October 11, 2006 at approximately
10 3:32 p.m.
11 The court reporter is David Sroka
12 with Wilcox & Fetzer, Wilmington, Delaware.
13 my name is Lindsay duPhily and I am the
14 videotape specialist with Discovery Video
15 Services.
16 Counsel will now introduce
17 themselves and then the court reporter will
18 swear in the witness.
19 MR. ALLINGHAM: I'm Tom Allingham
20 for the Plaintiffs and with me are Richard
21 Horvath and Brian Lenhard.
22 MR. GOSSELIN: Jason Gosselin for
23 Indian River School District and the Indian
24 River School Board and the individual board

1 Q. Is he a minister in Sussex County?
2 A. To the best of my knowledge, yes.
3 Q. He offered the commencement prayer in 2004
4 at Indian River High School?
5 A. As I understand it, yes, but I wasn't
6 present but that's what I heard.
7 Q. Did you have any involvement in inviting
8 Jerry Fike to give that prayer?
9 A. No.
10 MR. GOSSELIN: Objection,
11 don't answer that. Same thing, we are
12 sticking to the issues that are properly in
13 the case right now.
14 Q. Mr. Fike is quoted as saying in this
15 article, and I'm looking now about half way down
16 that second column from the right, "My loyalty is to
17 Jesus Christ, foremost, even if that takes me to
18 prison or to death. He is the predicted Messiah.
19 He rose again and I believe that he knew what he was
20 talking about. And if he is the Messiah, then all
21 religions are not equal. There are no alternatives
22 to Christianity."
23 Do you agree with that sentiment?
24 MR. GOSSELIN: Objection.

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1 I'm not going to instruct him not to 2 answer, but I'm letting you know that I 3 think this is outside the topic of 4 discussion, and if we are going to spend 5 the afternoon asking Mr. Helms what his 6 beliefs are I would appreciate it if 7 you'd tell me now because I will call 8 Judge Farnan. 9 But I'm not going to instruct him 10 not to answer this. 11 MR. ALLINGHAM: I'm working hard to 12 get this deposition done in accordance with 13 your request. If you make speeches it will 14 be harder. 15 Q. Do want me to reread the question again, 16 Mr. Helms? 17 A. Yes, please. 18 Q. All right, I don't think I need to read the 19 quote, do I? 20 A. No. 21 Q. My question is do you agree with the 22 sentiments expressed by the Reverend Fike in that 23 quotation? 24 A. Not in its entirety.	1 the Father except through the Son, that's what I 2 believe. 3 Q. Do you have any problem or disagreement or 4 concern about the accuracy of the statement, "The 5 only true religion is Christianity?" 6 A. It would not be a statement that I would 7 make, so it depends on where a person is coming from 8 when he makes that statement, and I can't put myself 9 into their mind. It wouldn't be a statement that I 10 would make. 11 Q. What efforts, if any -- let me give some 12 context. There was a meeting of the Board of 13 Education of the Indian River School District on 14 August 24, 2004, do you recall that meeting? 15 A. I know there was a meeting, I don't know if 16 I can recall specifics, but yeah. 17 Q. Let me identify that meeting as the meeting 18 at which estimates range in attendance from 600 to 19 800 people? 20 A. Yes, I do. 21 Q. You recall that meeting? 22 A. Yes, I do. 23 Q. What effort, if any, did you make to ensure 24 there would be a large turnout for that meeting?
Page 7	Page 9
1 Q. Would you tell me what portions of it you 2 do not agree with? 3 A. The things when he says there are no 4 alternatives, all religions are not equal. I don't 5 know if these are things that I would say, but he's 6 entitled to his opinion, and if that's what he 7 believes then that's fine. 8 Q. I agree with you that he is entitled to his 9 opinion. I also think that you are entitled to your 10 opinion. My question was directed to precisely what 11 your opinion is. Do you believe that all religions 12 are equal? 13 A. Well, it depends on like I said all 14 religions equal, probably not, but it depends on 15 what context, and I don't know what he was -- I 16 don't know what he was meaning there. 17 Q. Do you believe that the only true religion 18 is Christianity? 19 A. I believe that as I read the scriptures 20 that when it says no one comes to the Father except 21 by the Son, I believe that. Am I saying that 22 Christianity is the only religion and that sort of 23 thing, I wouldn't go that far. But I do believe 24 when I read the scriptures it says no one comes to	1 A. As I recall I made no effort to make sure 2 there was a large turn out. 3 Q. Were you aware of efforts in the community 4 to ensure that there was a large turnout for that 5 meeting? 6 A. Yes. 7 Q. Would you describe for me what those 8 efforts were? 9 A. I know of efforts by some people in the 10 community as far as speaking through their churches, 11 through their organizations, they went to -- I knew 12 some of those things. 13 Q. Give me as many details as possible? 14 A. I don't have any specifics, but I do know 15 that I heard of people who were contacting their 16 churches and asking them to show up. Specifics I 17 don't know. 18 Q. So, people contacting their churches as you 19 heard this, was it parishioners contacting the 20 ministers or pastors and saying you know you really 21 out to get the congregation out to this meeting? 22 A. I don't know of any specifics to that. 23 What I heard was that they were speaking to one 24 another. Or in other words, this person may be

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1 talking to the people they went to church with. I	1 A. Not specifically, no.
2 don't know if they spoke with their pastors	2 Q. Do you know at whose direction it was done?
3 directly. I don't know that.	3 A. I assume it was done on behalf of the
4 Q. Are you aware of any pastors who spoke from	4 superintendent. I did not hear her say that, but
5 the pulpit, or in the connection -- in their role as	5 that's what I'm thinking.
6 a pastor to urge parishioners to attend the August	6 Q. Were you surprised by the number of people
7 24th Board meeting?	7 who showed up at the meeting?
8 A. No, I don't know that specifically, no.	8 A. Yes.
9 Q. Are you aware of anyone informing Dan	9 Q. Were you shocked by the number of people
10 Gaffney of WGMD that the issue of School Board	10 who showed up at the meeting?
11 prayer would be addressed at the August 24th Board	11 A. No.
12 meeting?	12 Q. Why were you not shocked?
13 A. Only hearsay. I heard that was done, I	13 A. This was a important issue to a lot of
14 don't know. I don't have any specific knowledge of	14 people, and I assumed there would be a large number.
15 that. I heard it was done.	15 So, I wasn't shocked, but I was surprised.
16 Q. Where did you hear that from?	16 Q. How did you find out that this was an
17 A. Just talk. I mean I couldn't tell you who	17 important issue to a lot of people?
18 said it, but I do know I heard that.	18 A. Just general talk in the community. Like I
19 Q. Would you agree with me that word of mouth	19 said when people, I heard people were talking to
20 travels fast is Sussex County?	20 their congregations I knew that it was a hot topic.
21 MR. GOSSELIN: Objection.	21 Q. And when you say this was an important
22 Q. You may answer?	22 issue, what's the this, what's the issue that was
23 A. Yes.	23 important?
24 Q. And if you want to get a piece of news	24 A. It was an issue of free speech, freedom of
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1 around you can just start talking about it in the	1 religion, and that type of thing. A lot of people
2 local restaurants and it will get around?	2 were talking about that issue at that time.
3 A. Yes, but I would assume that's probably not	3 Q. And did you understand that what people
4 only Sussex County, but probably nationwide.	4 were all -- what people considered important was
5 Q. I take it from your earlier answer that	5 whether School Board members could pray before the
6 you did not personally ask anyone to attend the	6 School Board meeting?
7 Board of Education meeting on August 24th?	7 A. I don't recall thinking of it specifically
8 A. No.	8 that way about praying before a Board meeting, no.
9 Q. Do you know whether anyone in your family	9 Q. Did it seem to you that the public comments
10 did so?	10 at the Board meeting had as much to do with prayer
11 A. Not to my knowledge.	11 in the schools as they did prayer before a School
12 Q. Did anyone tell you in advance of the	12 Board meeting?
13 meeting that an overflow was expected and that media	13 A. Yes.
14 had been set up, speakers in the parking lot, video	14 Q. Did you think that represented a
15 feeds to separate rooms, in order to accommodate the	15 misunderstanding on the part of the public as to
16 many hundreds of people who were anticipated?	16 what was before the Board at that meeting?
17 A. Before the meeting?	17 A. Yes.
18 Q. Yes.	18 Q. And what efforts were made to correct that
19 A. No.	19 misunderstanding?
20 Q. So, when you arrived and saw all that	20 A. Well, on my part I didn't know it was a
21 equipment set up that was a surprise to you?	21 misunderstanding until that night. So, I don't know
22 A. Yes.	22 of anything that was done to prevent it because
23 Q. All right. Do you know who set up all that	23 quite frankly I didn't know it was a
24 equipment?	24 misunderstanding until people started getting up at

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<p style="text-align: right;">Page 14</p> <p>1 the podium talking.</p> <p>2 Q. That is to say until people started talking</p> <p>3 you thought people understood that this was a School</p> <p>4 Board prayer issue?</p> <p>5 A. No. I didn't think it was a School Board</p> <p>6 prayer issue, I thought it was more along the lines</p> <p>7 of prayer before graduation, and that sort of thing.</p> <p>8 More so than the Board prayer issue.</p> <p>9 Q. Have you ever had occasion to -- strike</p> <p>10 that.</p> <p>11 How did you form the view that you thought</p> <p>12 what was being talked about at the August 24th</p> <p>13 meeting was graduation prayer rather than School</p> <p>14 Board prayer?</p> <p>15 A. Well, as I recall it was a matter of</p> <p>16 prayer. I didn't in my own mind I didn't separate</p> <p>17 it between prayer before graduation or that sort of</p> <p>18 thing as specifically to the School Board meeting.</p> <p>19 I thought it was prayer in general, but not prayer</p> <p>20 in school, but prayer before any graduation or that</p> <p>21 sort of thing. I didn't, I didn't separate the two</p> <p>22 in my mind.</p> <p>23 Q. So, as you walked into the August 24th</p> <p>24 meeting you thought what was being discussed was</p>	<p style="text-align: right;">Page 16</p> <p>1 any specifics about an executive session where we</p> <p>2 thought some people had misunderstood.</p> <p>3 I don't know what specific actions were</p> <p>4 taken.</p> <p>5 Q. Did you think given the clear</p> <p>6 misunderstanding that it was important for the Board</p> <p>7 to correct that misunderstanding?</p> <p>8 A. I don't recall -- I don't recall myself</p> <p>9 making a statement like we must clear up this</p> <p>10 misunderstanding. I do know it was brought up, but</p> <p>11 I don't recall saying anything specifically where we</p> <p>12 need to make sure we clear up this misunderstanding.</p> <p>13 Q. Now, when you say I know it was brought up,</p> <p>14 does that mean the notion that people had</p> <p>15 misunderstood what was before the Board was brought</p> <p>16 up?</p> <p>17 A. In the executive session I think there was</p> <p>18 some mention of there is some people here tonight</p> <p>19 that I think misunderstood what was going on. I</p> <p>20 don't recall who said that, but I do recall it being</p> <p>21 said.</p> <p>22 Q. Were you present throughout the public</p> <p>23 comment session at the August 24 meeting?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 prayer at school related functions outside of the</p> <p>2 school day, is that a fair description?</p> <p>3 A. Well, in my words, in my thoughts I would</p> <p>4 say it was prayer in general that had anything to do</p> <p>5 with banquets, graduation, that type of thing, and</p> <p>6 some of that could have been part of the school day</p> <p>7 and some of it might not have been. But I didn't</p> <p>8 think it was an issue of whether the students could</p> <p>9 open the day with prayer or that sort of thing.</p> <p>10 I mean that issue in my mind had been</p> <p>11 settled by the courts and I didn't think we were</p> <p>12 there to discuss that. So, when people started</p> <p>13 coming up to the podium and talking about that I</p> <p>14 thought well, they obviously misunderstood what's</p> <p>15 going on.</p> <p>16 Q. Where do you think that misunderstanding</p> <p>17 came from?</p> <p>18 A. I have no idea.</p> <p>19 Q. What efforts did the Board make to correct</p> <p>20 that misunderstanding?</p> <p>21 A. I don't recall anything specifically being</p> <p>22 done as far as the Board is concerned. I'm not sure</p> <p>23 whether Mrs. Hobbs took any action or not. I think</p> <p>24 there was some discussion, although I can't recall</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. As a Board member what was your reaction to</p> <p>2 the tone of the comments at that public meeting?</p> <p>3 A. As far as what?</p> <p>4 Q. Did you have any reaction to the tenor or</p> <p>5 tone of comments that were offered by the public</p> <p>6 during the 45 minute public commentary session at</p> <p>7 the August 24th meeting?</p> <p>8 A. In my own mind I would say to you that I</p> <p>9 didn't agree with everything that was said.</p> <p>10 Q. My question -- that's helpful, and I thank</p> <p>11 you for the answer, but my question had more to do</p> <p>12 not so much with whether you agreed with the</p> <p>13 content, but whether you were disturbed by the tone</p> <p>14 and tenor of the comments? Did anything said</p> <p>15 during that meeting disturb you as a human being?</p> <p>16 MR. GOSSELIN: Objection.</p> <p>17 A. As I would say, some people made some</p> <p>18 comments at the podium that I myself would not have</p> <p>19 made, but I guess it's a matter of your</p> <p>20 interpretation of being upset and that sort of</p> <p>21 thing. Did I agree with everything, no. Was I</p> <p>22 upset to the point where I would jump up and object,</p> <p>23 no. I didn't feel that way because we've always</p> <p>24 been told that people are allowed to express their</p>

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1 opinions, say what they need to say at the podium,
2 as long as certain guidelines are followed. And so
3 we're instructed more or less to just sit there and
4 listen. Did I agree with everything, no.
5 Q. Who instructed you to sit there and listen?
6 A. We had been advised by our Board attorney
7 in the past that public comment section would be
8 that people are allowed to express their opinions
9 and we listen.
10 Q. And that's Mr. Griffin?
11 A. Yes.
12 Q. Did Mr. Griffin -- strike that, I don't
13 need to know what Mr. Griffin said. There are
14 limits on what people can say from the podium at the
15 microphone during the public comment session, aren't
16 there?
17 A. That's correct.
18 Q. And among others people are not permitted
19 to speak about the district personnel?
20 MR. GOSSELIN: Objection. Go
21 ahead, you can answer.
22 A. People are not permitted to, yes, use names
23 as far as that's what they consider to be executive
24 session material. It's when you get into specific

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1 Q. And courteous?
2 A. Yes.
3 Q. Would you agree with me that a number of
4 the comments from the podium during that August 24th
5 meeting were not respectful or courteous or
6 consistent with public order?
7 A. There again I think it's a matter of
8 opinion. I can only say there was some things that
9 were said that I would not personally say, but
10 whether they are not courteous or whatever, that's a
11 matter of someone's opinion. What is courteous to
12 someone may not be courteous to someone else.
13 Q. Sure, and you are a member of the Board
14 that has been charged with ensuring that comments
15 from the podium comply with the Board's guidelines?
16 A. Yes.
17 Q. And so your opinion, personally, as a Board
18 member matters to me?
19 A. Okay.
20 Q. Do you recall any comments that you
21 considered inconsistent with the guidelines that the
22 Board had applied to the public comment session at
23 Board meetings?
24 A. I don't recall anything specific, but maybe

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1 names, like if you are having -- an example would be
2 if you are having trouble with a teacher and you
3 come to the podium and you say there is a teacher at
4 X school that we're having a problem with, that's
5 acceptable. But if you come up there and say I'm
6 having trouble with Mr. Smith, we would say that's
7 executive session material because you are dealing
8 with names.
9 Q. Are there any other limitations of what
10 people can say from the microphone?
11 A. Yes, there is several, I don't recall what
12 they are, but I know the main thing that has been
13 expressed to us is that personalities or specific
14 names are not supposed to be used. I do remember
15 that very well. And there are some others.
16 Q. It's the responsibility of the Board and
17 particularly the Board president is to ensure that
18 the comments from the podium during the public
19 comment session are consistent with public order,
20 isn't it?
21 A. I would say so, yes.
22 Q. And also the Board makes an effort to
23 ensure that comments from the podium are respectful?
24 A. Yes.

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1 if I reheard 'em I may be able to comment on them,
2 but I can't recall anything specifically.
3 Q. What did you do to prepare for this
4 deposition today?
5 A. Just more or less said I'd tell the truth
6 as I recall.
7 Q. Did you meet with your lawyers before the
8 deposition?
9 MR. GOSSELIN: And just
10 objection, caution. You can answer that
11 question but don't say anything that you
12 and I talked about, or you and another
13 lawyer talked about in preparation for the
14 deposition.
15 Q. Did you meet with lawyers in preparation
16 for this deposition?
17 A. Yes.
18 Q. Who did you meet with?
19 A. Jason.
20 Q. Jason Gosselin?
21 A. Yes, and his associates.
22 Q. When did you have that meeting?
23 A. Well, I think it was earlier this week.
24 Q. Okay. Earlier this week?

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1 A. Well, I'm sorry, must be last week. 2 MR. GOSSELIN: Last week. 3 Q. Last week, I was going to say -- 4 A. This is only Wednesday, right? 5 Q. Have you had occasion to speak to Dr. 6 Hattier about his deposition yesterday? 7 A. No. 8 Q. Have you had occasion to speak on Mr. 9 Bireley about his deposition today? 10 A. No. 11 Q. Have you had occasion to speak to 12 Mr. Gosselin about Mr. Hattier or Mr. Bireley's 13 deposition? 14 A. No. 15 MR. GOSSELIN: Objection, 16 objection, you don't have to answer that. 17 Q. Who is representing you at the deposition 18 today? 19 A. Mr. Gosselin. 20 Q. Are you separately represented in 21 connection with this litigation? 22 A. I'm not sure, to be honest with you. I'm 23 not sure. 24 Q. What would you need to know in order to	1 taken) 2 (WHEREUPON Deposition 3 Exhibit 40 was marked for identification.) 4 MS. DUPHILY: We are back on 5 the record at 3:56 p.m. 6 Q. While we were on the break I asked the 7 videographer to mark as Deposition Exhibit 40 the 8 case of the CD and the CD bearing the Bates number 9 BPD1288. I will represent to you that this is a 10 copy made of a videotape recording of a portion of 11 the August 24, 2004 Board meeting. 12 A. Okay. 13 MR. ALLINGHAM: All right, and I'm 14 going to ask Mr. Horvath to put it into the 15 computer which we are using as a player. 16 For the record, this is the same 17 disk that we played during the Bireley 18 deposition, and I will put on the record 19 the starting and ending times of that tape 20 which we played during the Bireley 21 deposition and which we will be playing 22 during your deposition which is at one hour 23 one minutes and zero seconds to one hour 24 four minutes and 19 seconds.
Page 23	Page 25
1 answer the question whether you are being 2 represented in this litigation? 3 A. Well, I know I have an agreement with 4 Mr. Neuberger. 5 Q. What is that the nature of that agreement? 6 A. I signed a paper that he would be my lawyer 7 in representing me on behalf of the suit about the 8 prayer issue. 9 Q. You filed an affidavit in court in which 10 you said that you did not wish to be represented by 11 John Balliger and John Cafferty. I take it that you 12 have no such reservations about Mr. Gosselin and his 13 firm? 14 A. No. 15 Q. That is to say you don't have such 16 reservation? 17 A. I don't have such reservation. 18 Q. Sometimes I ask questions in an odd way. 19 A. As I understand it Mr. Gosselin and his 20 firm is representing the Board and I'm part of the 21 Board, so I don't have any objection to that. 22 MS. DUPHILY: We are going 23 off the record at approximately 3:55 p.m.. 24 (WHEREUPON a brief recess was	1 Q. You mentioned that you don't have a 2 specific recollection of finding any particular 3 comment, I forget the word I used, troubling or 4 something, and you said maybe if I could look at it 5 I could have my recollection refreshed. I want to 6 show you a clip from this meeting -- 7 A. Okay. 8 Q. -- and ask you some questions. 9 (AT THIS POINT A PORTION OF THE CD OF THE AUGUST 10 24, 2004 MEETING WAS PLAYED) 11 Q. As you think back on the August 24th 12 meeting was there anything that Mr. Johnson said 13 that disturbed you at the time? 14 A. No. 15 Q. So, it didn't disturb you that Mr. Johnson 16 offered up, as an example of the good Lord's power, 17 Madelyn Murray-O'Hare's fate? 18 A. I don't know that that was what he was 19 saying. I mean I don't know what his intent was. I 20 heard what he said. When he said that Miss Madelyn 21 O'Hare disappeared, well she did. I don't know if 22 he meant that God did that or the Lord did that. I 23 mean I heard what he said but -- 24 Q. Let me see if I can test that. What he

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1 said was there is a higher power than the U.S.
 2 Supreme Court, the good Lord has proven that,
 3 Madelyn Murray-O'Hare disappeared and was never seen
 4 again. We all know who she was, she is the one who
 5 started the movement to take prayer out of our
 6 schools. Now, did you not understand that to be a
 7 suggestion that the Dobriches might meet a similar
 8 fate?

9 **A. No.**

10 Q. Did you not understand that that was
 11 intended to intimidate the Dobriches and people who
 12 had a different point of view than Mr. Johnson's
 13 point of view?

14 MR. GOSSELIN: Objection.

15 **A. There again I don't know what his intent
 16 was.**

17 Q. I didn't ask what his intent was, sir, I
 18 asked what your understanding --

19 MR. GOSSELIN: Objection.

20 Settle down, settle down, you are getting
 21 excited again. Just ask him the questions.

22 Q. I didn't ask what Mr. Johnson's intention
 23 was, I asked what your understanding of his words
 24 was?

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1 MR. GOSSELIN: Objection,

2 that's asked and answered. You asked him
 3 that a couple of times and he gave you an
 4 answer a couple of times.5 **A. I don't know why anybody would use that. I
 6 don't know what his intent was. You asked me if I
 7 thought -- if you are asking me if I thought that
 8 was a threat on his behalf, I didn't take it that
 9 way.**

10 Q. Did you think it was courteous?

11 **A. That's a matter of interpretation.**

12 Q. Did you think it was courteous?

13 **A. I didn't think it was uncourteous.**

14 Q. Okay, so you thought it was not

15 discourteous. Did you think it was respectful?

16 **A. All I can say is that would not be
 17 something that I would say. Is it disrespectful to
 18 someone, maybe, possibly. Is it disrespectful to
 19 everyone, I don't know. Was it disrespectful to me,
 20 no. The only thing --**

21 Q. Did you think it was -- excuse me, I

22 interrupted you I apologize. The only thing, you

23 started to say the only thing?

24 **A. The only thing I can tell us is that would**

1 **A. If you're -- I don't really understand what
 2 you're saying. If you're asking me did I understand
 3 that to be a threat by Mr. Johnson to say that if
 4 the Dobriches continued this that something like
 5 that would happen to them, no, I did not understand
 6 it that way.**

7 Q. Did you have any understanding of why he
 8 raised the issue of Madelyn Murray-O'Hare and her
 9 disappearance? By the way, she was seen again,
 10 wasn't she?

11 **A. I don't know.**

12 Q. Found in a shallow grave dismembered?

13 **A. Oh, I did hear that, yes.**

14 Q. Yeah, that's true?

15 **A. Yes.**

16 Q. What was your understanding of why someone,
 17 anyone, including Mr. Johnson, would raise the issue
 18 of Madelyn Murray-O'Hare's disappearance in the
 19 context of a School Board meeting on School Board
 20 prayer?

21 MR. GOSSELIN: Objection can you
 22 read the question again?

23 (WHEREUPON the reporter read
 24 back the preceding question)

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1 **not be something that I would say. I can't speak
 2 for Mr. Johnson.**

3 Q. Would you describe for me why that would
 4 not be something that you would say?

5 **A. I just don't think referring to someone who
 6 has had some misfortune in their life and has met a
 7 tragic death like that, why -- I just wouldn't say
 8 anything like that. I have no reason to say
 9 anything like that.**

10 Q. Did you think it was a coincidence that
 11 Mr. Johnson referred to someone who met a tragic end
 12 in their life, in conjunction with a reminder that
 13 that person was the person who started the movement
 14 to take prayer out of our schools?

15 **A. I can only assume that it was not a
 16 coincidence on his behalf. I think he said it for
 17 some reason, now exactly what that reason is, I
 18 don't know.**

19 Q. And on August 24th you didn't make an
 20 effort to think about what the reason might have
 21 been for his mentioning the disappearance of the
 22 person who had been responsible for the movement to
 23 "take prayer out of our schools?"

24 MR. GOSSELIN: Objection.

8 (Pages 26 to 29)

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1 **A. The only thing I can tell you is sometimes**
 2 **when you listen there are things that you take to**
 3 **heart, and there are some things that you disregard.**
 4 Q. Which did you do with this?
 5 **A. I recall that is something that I**
 6 **disregarded and I probably said like I'm saying now**
 7 **I said in my mind probably, I don't recall exact**
 8 **words, that's something I would not have said.**
 9 Q. Now, I would like to turn that statement
 10 around, and I'd like to ask you whether it's
 11 something that you believe that Mrs. Dobrich and her
 12 family, who were present at the meeting, could
 13 easily have disregarded?
 14 MR. GOSSELIN: Objection.
 15 Q. You may answer.
 16 **A. I don't know.**
 17 Q. Well, you are human being just like the
 18 rest of us, what do you think?
 19 **A. I'm sitting here trying to think. Probably**
 20 **at that particular time it might not have been**
 21 **received very well by her because she just might --**
 22 **she may have had a different interpretation, or it**
 23 **may have -- I'll use my words, struck her a little**
 24 **harder than me.**

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1 **free expression, and they are entitled to their own**
 2 **opinion. I don't know if we have specific**
 3 **guidelines on that, but I do know we have specific**
 4 **guidelines on using personal names. And then I'll**
 5 **go back again, it's a matter of interpretation, it's**
 6 **a matter of opinion.**

7 **But I do know that we have freedom of**
 8 **speech, so I don't know if the president could have**
 9 **cut him off at that time or not, according to the**
 10 **policy, I don't know. We'd have to review the**
 11 **policy. But I do know we are not suppose to use**
 12 **names, I do know that.**

13 Q. Did you hear the laughter from the crowd
 14 when Mr. Johnson mentioned Madelyn Murray-O'Hare's
 15 fate?

16 **A. I heard some -- let me just say I worked at**
 17 **a power plant for 30 years, I don't hear everything**
 18 **as good as I used to. I did hear some amens, I**
 19 **don't know if I heard laughter or not but I do know**
 20 **I heard amens.**

21 Q. Did you think it disturbing that a number
 22 of people said amen when he mentioned Madelyn
 23 Murray-O'Hare and her disappearance?

24 **A. Disturbing?**

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1 **I don't know that, but it could have. It**
 2 **possibly was not received very well by her and her**
 3 **family. But once again I'll say, it's something**
 4 **that I would not say.**
 5 Q. Which do you think is more, a more serious
 6 breach, potential breach of the public order, for
 7 Mr. Johnson to refer to Madelyn Murray-O'Hare in
 8 context of public comment on School Board prayer, or
 9 for someone to mention the name of a teacher with
 10 whom they had a problem in public session?
 11 MR. GOSSELIN: Objection.
 12 **A. Would you ask that question again?**
 13 Q. Sure. Do you have a sense of which is a
 14 more -- which one should the Board president have
 15 banged his gavel on, Mr. Johnson's saying we all
 16 remember that God proves his higher power, remember
 17 Madelyn Murray-O'Hare she disappeared and was never
 18 seen again, she was the one who took prayer out of
 19 our schools. That's one possibility where you might
 20 bang your gavel, or the other possibility where
 21 someone mentions the name of the teacher during the
 22 public comment?
 23 MR. GOSSELIN: Objection.
 24 **A. I would say that everyone is entitled to**

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1 Q. Yes.
 2 **A. No.**
 3 Q. Did you think it was consistent with
 4 traditional Christian values?
 5 MR. GOSSELIN: Objection.
 6 Don't answer that, okay, it's harassing.
 7 Q. Come on. As a Board member are you an
 8 agent of the government?
 9 **A. To the best of my knowledge, yes.**
 10 Q. Do you know Harold Johnson?
 11 **A. Yes, I do.**
 12 Q. How long have you known him?
 13 **A. Since 1991. I believe he was on the Board**
 14 **when I was first elected, and that's where I first**
 15 **met him.**
 16 Q. Is he just an acquaintance or a close
 17 friend?
 18 **A. He's more than an acquaintance. I'd say**
 19 **he's a friend, not a close friend.**
 20 Q. Did you speak to Mr. Johnson before the
 21 August 24th meeting about the comments that he would
 22 make?
 23 **A. No.**
 24 Q. Mr. Helms, do you maintain a file in

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1 connection with your service on the Board?

2 **A. I have some files, yes.**

3 Q. At some point during this litigation did

4 you review those files to determine whether you had

5 any documents that are responsive to a request for

6 documents that was filed in this case?

7 **A. Yes, we were asked if we had anything**

8 **specific to this case that they wanted it.**

9 Q. And is that the way it was said, if you

10 have anything specific to this case it's been

11 requested and you should turn it over?

12 **A. I think it was if you have any notes or**

13 **that sort of thing that they wanted them, yes, we**

14 **were told that.**

15 Q. Did you turn over anything that you had

16 that was responsive as you understood it?

17 **A. To the best of my recollection I turned**

18 **over everything that I had personally on that.**

19 Q. Do you keep notes at Board meetings?

20 **A. Yes.**

21 Q. Do you have a practice as to what you take

22 notes about --

23 **A. No.**

24 Q. -- or is it random?

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1 his attorney? Do you have any argument

2 that that is not protected by

3 attorney/client privilege?

4 MR. ALLINGHAM: Sure, the

5 witness has testified that he hasn't

6 retained Mr. Neuberger or isn't sure.

7 MR. GOSSELIN: No, he

8 testified that he didn't know whether

9 Mr. Neuberger is representing him today.

10 Q. Have you ever retained Mr. Neuberger?

11 **A. Yes.**

12 Q. Have you ever terminated that

13 representation?

14 **A. No.**

15 Q. Have you ever paid Mr. Neuberger for his

16 services?

17 **A. No.**

18 Q. Is he currently representing you today?

19 **A. I'm not sure. To the best of my knowledge**

20 **he is, but you know.**

21 MR. GOSSELIN: Did you give

22 him the documents when you believed that he

23 was representing you?

24 **A. Yes.**

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1 **A. It's random. I look at it like this, my**

2 **memory is not as good as other people's so what I do**

3 **a lot of times I will just jot down a word or**

4 **something that might help me remember something.**

5 Q. Did you provide any documents to

6 Mr. Neuberger at any time in your consideration of

7 whether to retain him?

8 **A. I think I did.**

9 Q. What documents did you send to him?

10 MR. GOSSELIN: Objection,

11 you don't have to answer that.

12 **A. Okay.**

13 Q. Were they Board documents?

14 **A. Yes.**

15 MR. GOSSELIN: Objection,

16 objection, you don't have to answer that.

17 **A. Okay.**

18 Q. Did you include all of the documents that

19 you provided to Mr. Neuberger in the documents that

20 you produced to your attorneys in this action?

21 MR. GOSSELIN: Objection,

22 you don't have to answer that.

23 Is there a good faith basis

24 for asking somebody what documents he gave

1 MR. GOSSELIN: Okay, end of

2 questioning.

3 Q. I'm going to ask a series of questions,

4 probably Mr. Gosselin will instruct you not to

5 answer, so take a second before you answer the

6 question.

7 Among the documents that you gave to

8 Mr. Neuberger were minutes of meetings included?

9 MR. GOSSELIN: Objection,

10 don't answer.

11 Q. Among the documents you gave to

12 Mr. Neuberger, were documents that are publicly

13 available included?

14 MR. GOSSELIN: Objection,

15 don't answer.

16 MR. ALLINGHAM: And am I correct

17 Jason that you will instruct the witness

18 not to answer any question concerning the

19 documents he gave to Mr. Neuberger?

20 MR. GOSSELIN: Yes. Unless

21 you can give me some good faith reason why

22 that's an inappropriate objection.

23 MR. ALLINGHAM: I just want the

24 objection on the record. I don't want to

10 (Pages 34 to 37)

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<p>1 have a debate about privilege here.</p> <p>2 MR. GOSSELIN: I am trying to be</p> <p>3 efficient here, I don't want to have to</p> <p>4 come back. If I'm wrong and you can tell</p> <p>5 me why, I don't want to have to come back</p> <p>6 here, I might consider withdrawing it.</p> <p>7 Q. Have you ever spoken with</p> <p>8 Mr. Johnson, Harold Johnson about Board prayer?</p> <p>9 A. Probably so.</p> <p>10 Q. Tell me everything that you can recall that</p> <p>11 you and he said to each other on that topic?</p> <p>12 A. I don't recall any specifics, but I say</p> <p>13 probably so because it may have came up, come up in</p> <p>14 conversations that we had, but I don't have any</p> <p>15 specific recollection of it.</p> <p>16 Q. What is your religious affiliation?</p> <p>17 A. I'm a Wesleyan.</p> <p>18 Q. Do you attend church?</p> <p>19 A. Yes.</p> <p>20 Q. What church do you attend?</p> <p>21 A. I attend the Roxanna Wesleyan Church.</p> <p>22 Q. You mentioned that you were aware that</p> <p>23 people were urging their congregations to attend the</p> <p>24 August 24th meeting, are you aware of any person in</p>	<p>1 A. This was the adult class.</p> <p>2 Q. The adult Sunday School?</p> <p>3 A. Yes.</p> <p>4 Q. Did any member of your church speak during</p> <p>5 the public commentary session of the August 24th</p> <p>6 meeting?</p> <p>7 A. No.</p> <p>8 Q. I am going to ask you some alternative</p> <p>9 questions about religion. Do you believe that</p> <p>10 Judaism is as valid a religion as Christianity?</p> <p>11 A. Yes.</p> <p>12 Q. Do you believe that Islam is as valid a</p> <p>13 religion as Christianity?</p> <p>14 A. Well, I guess I should've asked you on the</p> <p>15 first question, what do you mean as valid? I mean,</p> <p>16 give me your definition of valid?</p> <p>17 Q. Well, in answering the question without</p> <p>18 asking me for clarification, what did you mean by</p> <p>19 valid?</p> <p>20 A. I meant is someone entitled to worship</p> <p>21 Judaism, is someone entitled to worship as a Muslim,</p> <p>22 sure they are entitled. Is it valid, I want to know</p> <p>23 -- that was my interpretation of valid.</p> <p>24 Q. Fair enough. And so you would say given</p>
<p>1 your church who was urging the members to attend the</p> <p>2 meeting?</p> <p>3 A. Yes.</p> <p>4 Q. Who was that?</p> <p>5 A. Let me put it this way, I know it was</p> <p>6 mentioned in Sunday School. I am not sure exactly</p> <p>7 who said it, but I do know it was said because I</p> <p>8 heard it was said.</p> <p>9 Q. From whom did you hear it was said? That</p> <p>10 is to say, I know that you can't recall who said it,</p> <p>11 but who reported to you that it had been said?</p> <p>12 A. I heard from a lady, miss Joan Ennis from</p> <p>13 Roxanna. I think she mentioned it to me, maybe a</p> <p>14 couple of more ladies. If I told you who they were</p> <p>15 I'd just be speculating, but I know that I heard it</p> <p>16 from, I know Miss Joan said, said that to me.</p> <p>17 Q. And you know that she told you that it was</p> <p>18 mentioned in Sunday School that people should try to</p> <p>19 attend the August 24th meeting?</p> <p>20 A. I think, yes, she said several people in</p> <p>21 Sunday School had said that.</p> <p>22 Q. And I don't want to sound ignorant, but in</p> <p>23 my church Sunday School goes up to 15 or 16 year</p> <p>24 olds, are we talking about --</p>	<p>1 that definition that Islam is as valid a religion as</p> <p>2 Christianity?</p> <p>3 A. If we agree that valid means are they</p> <p>4 entitled to worship whatever way they feel,</p> <p>5 absolutely.</p> <p>6 Q. Now, I am going to ask you to consider a</p> <p>7 different definition of validity. Does a follower</p> <p>8 of Judaism have any chance of going to heaven?</p> <p>9 MR. GOSSELIN: Objection.</p> <p>10 This is, we are straying, don't answer</p> <p>11 that. We are straying way beyond what's</p> <p>12 appropriate in this case.</p> <p>13 MR. ALLINGHAM: I'm sorry, I</p> <p>14 just didn't hear, did you instruct him not</p> <p>15 to answer?</p> <p>16 MR. GOSSELIN: I did.</p> <p>17 Q. Do you have a belief as to the majority</p> <p>18 religion among voters in the Indian River School</p> <p>19 District?</p> <p>20 A. Yeah.</p> <p>21 Q. What is that?</p> <p>22 A. I think it would be Protestant.</p> <p>23 Q. What's the basis for your belief, just</p> <p>24 counting up the number of churches?</p>

11 (Pages 38 to 41)

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1 **A. Counting up the number of churches.**
 2 Q. And would your answer be the same among
 3 teachers in the district?
 4 **A. Probably so, although I wouldn't be as**
 5 **assured of that answer as I would on the other one.**
 6 **I'm not sure. I would assume that the majority**
 7 **would be Protestant, yes.**
 8 Q. And how about a belief as to the majority
 9 religion among students in the district, same as the
 10 families overall?
 11 **A. Probably the same.**
 12 Q. I'm sorry Mr. Helms, but this is the third
 13 of these depositions that I have taken, and to a
 14 little small degree they are starting to run
 15 together, so, forgive me if I ask a question that I
 16 asked you before. I showed you a clip of the
 17 videotape of the August 24th School Board meeting,
 18 do you know who directed that the meeting be
 19 videotaped?
 20 **A. No.**
 21 Q. It was not you I take it?
 22 **A. No.**
 23 Q. And it was not discussed beforehand at a
 24 Board meeting?

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1 **A. No. I mean I don't -- I assume it's so**
 2 **that they will be able to write down some minutes or**
 3 **something. I mean that's my assumption. I mean I**
 4 **don't know if anybody ever said this is why we are**
 5 **taking the audio, but that would be the intention I**
 6 **would think.**
 7 Q. Well, let me ask you a question. I
 8 understand sometimes maybe you don't have time or
 9 whatever it is to review the minutes before you vote
 10 to approve them. Would I be right, however, in
 11 assuming that you have reviewed as a Board member
 12 all of the Board's policies?
 13 **A. No, I have not reviewed all of the Board**
 14 **policy.**
 15 Q. How would you know what it is that you are
 16 charged with doing if you have not reviewed all of
 17 the Board's policies?
 18 **A. Well, I have reviewed the ones that I think**
 19 **pertain to my personal responsibility, but there are**
 20 **a lot of policies in that policy book that I have**
 21 **never looked at personally. I mean there are**
 22 **policies that deal with students, there are policies**
 23 **that deal with administrators, and there are**
 24 **policies that deal with the Board of Education.**

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1 **A. No.**
 2 Q. Have you, until today, ever reviewed the
 3 copy of the videotape of that meeting?
 4 **A. No, I haven't.**
 5 Q. Do you know whether any other Board member
 6 asked for a copy?
 7 **A. I don't know of any, no.**
 8 Q. The Board's minutes of its meetings are
 9 intended to accurately reflect what happened during
 10 the Board meeting, is that correct?
 11 **A. That's the intent.**
 12 Q. And you have a process pursuant to which at
 13 the next Board meeting you approve the minutes from
 14 the last Board meeting?
 15 **A. That's correct.**
 16 Q. And you personally, Mr. Helms, review the
 17 minute before you vote to approve them, correct?
 18 **A. Not always.**
 19 Q. That would be your intention?
 20 **A. That's the intention, yes.**
 21 Q. Are you aware that School Board meetings
 22 are audio recorded, audio taped?
 23 **A. Yes.**
 24 Q. Do you know why that happens?

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1 **I have reviewed the ones that are**
 2 **pertaining to the Board of Education, and my**
 3 **responsibilities. Can I quote them to you verbatim,**
 4 **no, but I have reviewed them. But there are some**
 5 **policies in there that I have not reviewed.**
 6 Q. How were you able to identify the ones that
 7 relate to your responsibilities if you haven't
 8 reviewed them all?
 9 **A. There is a tab in the policy manual that we**
 10 **receive that has the different categories and one of**
 11 **those is of the Board of Education.**
 12 Q. And you have reviewed all the policies
 13 under that tab?
 14 **A. Yes. And since I have been on the Board I**
 15 **have looked at those, although there are some that I**
 16 **probably can't recall, but I know where I can find**
 17 **them if there is a question.**
 18 Q. All of the policies that are in the policy
 19 manual are policies that were adopted by the Board,
 20 is that correct?
 21 **A. At some point in time, yes.**
 22 Q. And the Board is charged with enforcing and
 23 administering all of those policies, is that
 24 correct?

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12 (Pages 42 to 45)

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1 **A. I'm not -- the Board is responsible to make**
 2 **sure that those policies are enforced. I don't know**
 3 **if the Board enforces them themselves, but the buck**
 4 **stops here. Ultimately the Board is responsible as**
 5 **being the Board of Education.**

6 Q. Fair enough. It's true that you may
 7 delegate enforcement or administration in some
 8 areas, but the ultimate responsibility for
 9 enforcement and administration of the Board policies
 10 is with the Board?

11 MR. GOSSELIN: Objection.

12 Q. Correct?

13 **A. We do not enforce the policies. We are**
 14 **responsible to make sure that the policies are**
 15 **adhered to. In other words, the superintendent is**
 16 **responsible for the day-to-day operation of the**
 17 **district. However, when there is a question then**
 18 **that is brought to the Board, and then the Board has**
 19 **to make a decision on whether the policy was**
 20 **followed, whether it was not, but as far as**
 21 **enforcing the day-to-day operations and the policies**
 22 **I don't think that's our responsibility.**

23 **We are responsible for the policies but not**
 24 **to enforce them ourselves, if that's what you're**

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1 at which that issue was considered was June 15,
 2 2004, Mr. Helms, so let me show you the minutes from
 3 that meeting.

4 **A. Okay.**

5 Q. This set of minutes and I believe every set
 6 of minutes that I show you has either the signature
 7 or signature stamp from Mrs. Hobbs, does that
 8 indicate that these are the final minutes?

9 **A. I would assume so, yes.**

10 Q. Approved by the Board?

11 **A. Yes.**

12 Q. As a preliminary matter you're recorded as
 13 being present at this meeting, do you have any
 14 reason to doubt that you were there?

15 **A. No.**

16 Q. There is no discussion in the minutes of
 17 any member of the Board offering a prayer after the
 18 meeting was called to order, do you recall whether a
 19 prayer was offered?

20 **A. I don't recall specifically, no, but I**
 21 **would sit here and say I'm sure there was, but I**
 22 **don't recall any specific.**

23 Q. I wasn't asking you about the specifics of
 24 the prayer, I was just asking you do you recall

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1 **asking.**

2 MS. DUPHILY: We are going off the
 3 record at approximately 4:29 p.m..

4 (WHEREUPON a brief recess was
 5 taken)

6 MS. DUPHILY: Back on the record
 7 at approximately 4:36 p.m..

8 Q. I'm going to try to establish some
 9 chronological guideposts for purposes of our
 10 discussion. The graduation in 2004 that
 11 precipitated, it was the first event precipitating
 12 this lawsuit, took place in early June, do you
 13 recall that?

14 **A. I recall when it happened, but I wasn't**
 15 **there.**

16 Q. Am I correct in characterizing that as the
 17 first event that precipitated the Board's
 18 consideration of -- that culminated in the Board's
 19 consideration and adoption of School Board Prayer
 20 Policy?

21 **A. I would say so, yes.**

22 Q. The first Board meeting at which, and we
 23 have already marked these as exhibits, so I'm going
 24 to get out the documents. The first Board meeting

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1 whether a prayer was offered?

2 **A. No, I don't recall.**

3 Q. Are you sure that a prayer was offered
 4 whether you recollect it or not?

5 **A. No.**

6 Q. Okay. Is that because you have been at
 7 Board meetings when no prayer was offered?

8 **A. Not that I can remember. We always start**
 9 **our regular Board meeting with prayer, that's why I**
 10 **say I assume that we had prayer, but I don't recall**
 11 **any specifics.**

12 Q. On page two of the Board minutes you'll see
 13 under public comments that the minutes record,

14 "Mrs. Dobrich, a parent of the Jewish faith
 15 expressed concern about prayers at school district
 16 events. She asked that the Board consider using a
 17 non-denominational prayer that would be appropriate
 18 for all faiths at events such as graduations, etc.,"
 19 do you see that?

20 **A. Yes.**

21 Q. Is that a fair summary of what Mrs. Dobrich
 22 said?

23 **A. As I recall it, yes.**

24 Q. Did ever have a separation conversation

13 (Pages 46 to 49)

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1 with Mrs. Dobrich about her concerns?
 2 **A. Not to my recollection.**
 3 Q. Did any Board member tell you that that
 4 Board member had had a separate conversation with
 5 Mrs. Dobrich about her concerns?
 6 **A. Yes.**
 7 Q. Which Board member?
 8 **A. As I recall I believe it was Dr. Hattier.**
 9 Q. What did Dr. Hattier tell you about his
 10 conversation with Mrs. Dobrich?
 11 **A. I don't recall specifics, but it was**
 12 **something to the order of I tried to talk to Mrs.**
 13 **Dobrich about this, her concerns. I don't recall**
 14 **any specifics.**
 15 Q. Do you recall Dr. Hattier urging Mrs.
 16 Dobrich not to contact the ACLU?
 17 **A. I don't recall him telling me that, no.**
 18 Q. Did you later come to learn that he had
 19 urged Mrs. Dobrich not to contact the ACLU?
 20 **A. If he said that I don't recall.**
 21 Q. All right, if you turn to the next page,
 22 page three of the minutes you'll see under
 23 graduation ceremonies, that the minutes record Ms.
 24 Hobbs provided the Board with information regarding

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1 **A. I didn't know at the time.**
 2 Q. You do know now?
 3 **A. Yes.**
 4 Q. What was the reason?
 5 **A. I was told that he went to talk to Mrs.**
 6 **Dobrich.**
 7 Q. Who told you that Dr. Hattier?
 8 **A. Dr. Hattier, yes.**
 9 Q. Did he report anything about what Mrs.
 10 Dobrich said during that conversation?
 11 **A. Not that I recall.**
 12 Q. When Dr. Hattier returned to the meeting
 13 did he report to the Board members on the substance
 14 of his conversation with Mrs. Dobrich?
 15 **A. I don't recall him doing that because I**
 16 **think he told me some time later that that's where**
 17 **he'd been. I don't recall it as he came back and**
 18 **said I've spoken to Mrs. -- I don't recall that.**
 19 **And he may have but I don't recall it that way**
 20 **because he told me some time later where he had**
 21 **been.**
 22 Q. All right, I'll represent to you that
 23 that's the first set of minutes at which this issue
 24 is discussed in any way. Now, let me give a copy of

1 school prayer from Mr. Griffin. Do you recall what
 2 the materials were that were provided by
 3 Mr. Griffin?
 4 **A. No, I don't.**
 5 Q. It says that you then moved to table this
 6 item until the next regular Board meeting. Why did
 7 you move to table it to the next regular Board
 8 meeting?
 9 **A. As I recall we received a packet of**
 10 **information that night and I didn't feel as though,**
 11 **and I was only expressing my opinion, I didn't feel**
 12 **as though I had enough time to read and digest and**
 13 **do anything that night. So, I asked the Board, I**
 14 **made a motion to table so that we could have time to**
 15 **look at the information and see what was in the**
 16 **packet.**
 17 Q. And the next month would give you that
 18 time?
 19 **A. Whatever time, yeah. Whatever time it**
 20 **took. I didn't have any specific length of time in**
 21 **mind, I just knew I needed more time.**
 22 Q. The minutes then reflect that Dr. Hattier
 23 left the meeting from 8:30 to 8:45, do you know why
 24 Dr. Hattier left the meeting?

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1 what we previously marked as PX16. These are the
 2 minutes of the July 27, 2004 meeting.
 3 **A. Okay.**
 4 Q. Before I turn to these minutes, Mr. Helms,
 5 up until the June 15th meeting, the one we just
 6 looked at, had you done anything personally on the
 7 issue of School Board prayer, graduation prayer,
 8 prayer in the schools, religious policies in the
 9 schools, anything like that?
 10 **A. You mean when you say have done anything**
 11 **personally, do you mean did I review them or --**
 12 Q. Did you review the policies, did you
 13 consult with anyone, did you do anything, or was
 14 your first substantive contact with these issues
 15 that June 15th Board meeting and Mr. Griffin's
 16 package that was given you that night?
 17 **A. As I recall that was the first time.**
 18 Q. Okay.
 19 Now, in the period from June 15 to July 27
 20 which is the next Board minutes we have here, did
 21 you do anything during that period to investigate or
 22 explore or examine the issues of School Board prayer
 23 and the related religious policies?
 24 **A. As I recall I think I tried to go on the**

14 (Pages 50 to 53)

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1 **Internet and do some reading on the Internet, as far**
 2 **as about prayer before graduation and that sort of**
 3 **thing. As I recall I did do some of that.**
 4 Q. Did you do anything other than researching
 5 the issue on the Internet?
 6 **A. Not that I recall. I think that I was**
 7 **trying to do some reading.**
 8 Q. Do you have any recollection of how you
 9 tried to locate materials on the Internet?
 10 **A. No, just type in something like school**
 11 **prayer or prayer. I think I started with the word**
 12 **prayer and then went from there.**
 13 Q. Probably got a lot of results?
 14 **A. Yes, I did.**
 15 Q. Okay, so, let's -- was this time period the
 16 first time that you had as a Board been asked to
 17 consider the issue of prayer in the schools?
 18 **A. I don't recall it being raised as an issue**
 19 **before that.**
 20 Q. Do you recall your -- that's an oddly asked
 21 question, let me strike it.
 22 Did you yourself raise the possibility of
 23 having a day of prayer in the Indian River School
 24 District Schools?

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1 think about this for discussion at a future Board
 2 meeting. Mrs. Hobbs will research this idea and
 3 report back to the Board."
 4 Do you recall having made that suggestion?
 5 **A. Yes.**
 6 Q. Did the Board ultimately designate a day of
 7 prayer at the schools?
 8 **A. No.**
 9 Q. In connection with that had you done any
 10 independent research on the Internet?
 11 **A. Not that I recall. I just thought it would**
 12 **be a good idea. I don't recall doing any research**
 13 **on it.**
 14 Q. Do you remember what, if anything, that
 15 prompted your thinking about the issue at that time?
 16 MR. GOSSELIN: Objection.
 17 Again this is part of the religion at
 18 school generally which the judge --
 19 MR. ALLINGHAM: I'll
 20 withdraw the question, I'll withdraw the
 21 question, I understand. Every once in a
 22 while my idle curiosity gets the better of
 23 me.
 24 MR. GOSSELIN: And if I can

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1 **A. Yes. Yes, I did.**
 2 Q. Do you have any recollection of when that
 3 occurred?
 4 **A. No.**
 5 Q. Was that at a public or an executive
 6 session of the Board?
 7 **A. I don't recall.**
 8 Q. Let me show what's been --
 9 MR. ALLINGHAM: I'm going to
 10 mark as Plaintiff's Exhibit 41 a document
 11 bearing Bates numbers PR271 through 280.
 12 (WHEREUPON Plaintiff's Exhibit
 13 41 was marked for identification.)
 14 Q. You will see that this document is signed
 15 by Mrs. Hobbs on page eight of the minutes. Can you
 16 identify this as the official Board minutes of June
 17 29, 1999, the Board's regular meeting?
 18 **A. Yes.**
 19 Q. Okay. On page four of the minutes, under
 20 the heading "School Prayer," it's the second heading
 21 on that page. The minutes reflect, "Mr. Helms asked
 22 that the Board consider designating a, "day of
 23 prayer" which would be led by students in our
 24 schools. He suggested that the members of the Board

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1 satisfy your curiosity by not objecting for
 2 a question or two I generally, you know,
 3 I'm not trying to stop you.
 4 Q. Okay, so in the July 27 minutes you will
 5 see that in the public comment section on page two,
 6 one, two, three, four, five, six, seven, eight,
 7 nine, ten, eleven, 12 people made public comments
 8 about the district's practice of holding prayers at
 9 school sponsored events including graduation
 10 ceremonies, do you see that?
 11 **A. Yes, I see that, yes.**
 12 Q. And it records that comments were equally
 13 made in favor of continuing and discontinuing the
 14 present practice I think that I asked you, but again
 15 I may have confused you with Mr. Bireley or Dr.
 16 Hattier, did you form a view as to the majority view
 17 of your constituents on the issue of continuing or
 18 discontinuing School Board prayer?
 19 **A. Yes.**
 20 Q. Did the comments expressed at the July 27
 21 meeting on a somewhat different topic have any
 22 impact on your views about your constituents'
 23 opinion on School Board prayer?
 24 That is to say, did you look at this sort

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1 of equal breakdown in these public comments and take
 2 that into account in forming your view about your
 3 constituents' opinions on School Board prayer?
 4 **A. Yes.**
 5 Q. Were you surprised that the comments sort
 6 of split down the middle on this issue?
 7 **A. Yes.**
 8 Q. Why were you surprised?
 9 **A. Well, you asked me the question what was my**
10 opinion about my constituents —
 11 Q. Uh-hum.
 12 **A. Well, my opinion is that the majority of my**
13 constituents wanted prayer. However, you must
14 understand that although I represent the entire
15 district, when you asked me about my constituents, I
16 represent district number five, so my interpretation
17 of my constituents was that they overwhelmingly
18 supported prayer.
 19 **But so that night when it came up, I think**
 20 **the comment was made like it was split right down**
 21 **the middle six and six. I remember thinking wow how**
 22 **do you do that, did somebody plan that, or is that**
 23 **the way it just happened to be. But that was,**
 24 **that's why I said you asked me was I surprised,**

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1 **that you go against the tide it takes strength and**
 2 **courage. And in our district I think it's fairly**
 3 **well known that the overwhelming majority is in**
 4 **favor of prayer. So anyone who would stand up and**
 5 **speak against that, it would take courage. But I**
 6 **don't think it had anything to do with the**
 7 **atmosphere of what the people said that night.**
 8 **I think it was pretty well known before**
 9 **that meeting. That's why I say it takes courage to**
 10 **do that.**
 11 Q. Would you agree that it takes courage to
 12 identify yourself as a person -- strike that I think
 13 you've answered the question, never mind.
 14 Mr. Helms, I'm going to again use the
 15 August 24 meeting as an example because it had so
 16 many public speakers. When people came to the
 17 podium during the public comment session did you
 18 know whether they were residents of your particular
 19 district or not?
 20 **A. Like district five you mean?**
 21 Q. Yes.
 22 **A. Yes.**
 23 Q. So, you would be able to identify your
 24 constituents?

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1 **yeah.**
 2 **But my constituents I feel were**
 3 **overwhelmingly in favor of prayer.**
 4 Q. The way the Board sets up speakers at the
 5 public comment portion of the meeting, it's not, you
 6 can't manipulate that, people just sign up, right?
 7 **A. Right.**
 8 Q. And then you pick them in order?
 9 **A. The best of my knowledge it's first come**
10 first serve.
 11 Q. Let me ask you a question. Given what you
 12 understand to be the majority opinion in the Indian
 13 River School District, do you think it takes some
 14 courage for someone to speak up at a public meeting
 15 and oppose prayer?
 16 **A. Absolutely.**
 17 Q. And I'm not going to get on my high horse
 18 again, and I apologize for doing that, but is the
 19 tenor of some of the comments at the August 24
 20 meeting an example of why you believe it takes
 21 courage to speak up against prayer at school
 22 functions in the Indian River School District?
 23 **A. No, I think the reason why I -- I'll**
 24 **clarify my answer by saying that I think any time**

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1 **A. Most people, yes.**
 2 Q. This is Exhibit 17 which is the minutes of
 3 the August 24th meeting. If you look at page four
 4 under public comments, there is a list of all the
 5 people who spoke. Could you identify for me those
 6 persons whom you believe to be residents of district
 7 five?
 8 **A. I will try. I believe Danny Tice may be in**
 9 **my district, I am not 100 percent sure. I think**
 10 **Mr. Paris Mitchell may have been in my district at**
 11 **that time, and that would be the ones that I**
 12 **recognize.**
 13 Q. Okay. While we are open to this page, the
 14 last sentence says that a public forum may be
 15 scheduled, has such a forum ever been scheduled?
 16 **A. Not to my knowledge.**
 17 Q. Back to the July 27 minutes, if you turn to
 18 -- sorry the same page down at the bottom of page
 19 two, graduation ceremonies. You moved to table this
 20 issue until after executive session. And that was
 21 passed unanimously, do you recall that?
 22 **A. Yes.**
 23 Q. And then if you turn to page eight of the
 24 minutes you will see that at 10:20 the Board went

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16 (Pages 58 to 61)

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1 into executive session and came back out of
2 executive session at 12:10 a.m., and I believe it
3 was Dr. Hattier who pointed out that you guys work
4 long hours?

5 A. Yes, we do.

6 Q. This is July 27, this is the second meeting
7 on this topic. Do you recall anything of what the
8 Board discussed in executive session, if anything,
9 having to do with the broadly speaking, the school
10 prayer issue?

11 A. I don't recall anything specific.

12 Q. Do you recall anything that you said during
13 that meeting?

14 A. Not specifically, although I know I made
15 several comments about this issue, and I think I am
16 not sure whether I made a comment that night. I
17 think I can recall making a statement like I wanted
18 to make sure that whatever our policy, whatever
19 policy we adopt is according to the law. And I want
20 to take time and I want to get it right.

21 But I can't tell you that I made that
22 statement that night, but I remember making
23 statements like that, but I don't know if it was
24 that particular night.

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1 advice. I can't say that.

2 Q. But no lawyer was present?

3 A. I don't recall. If somebody showed me a
4 piece of paper that said somebody was there I would
5 say okay, but I can't recall specifics.

6 Q. From this paper which at least shows that
7 no lawyer was present at the beginning of the
8 meeting?

9 A. Okay.

10 Q. Does that comport with your recollection?

11 A. Yeah.

12 Q. In the earlier minutes of the June 15
13 minutes there was a notation that there had been
14 materials prepared by Mr. Griffin and you had
15 proposed tabling the matter to have a chance to look
16 at those materials?

17 A. Yes.

18 Q. I don't want to know what they said, I
19 would like to know what they were. Was it a
20 memorandum, was it copies of cases, was it -- tell
21 me what it was?

22 A. I can't recall specifically, but I know
23 like the chain of events was we received something
24 like preliminary, and I got the impression that

1 Q. Am I right in understanding that that was a
2 sentiment that was shared, as far as your
3 understanding, by the other Board members?

4 A. Yes, it is.

5 Q. This is not something you ought to rush
6 into?

7 A. Exactly.

8 Q. During the executive session did you hear
9 from any lawyers on the topic?

10 A. I don't recall. We may have. I can't
11 recall specifically.

12 Q. I notice that in the other visitors and
13 staff in attendance Mr. Griffin was not listed,
14 Mr. Neuberger was not listed. No person that I can
15 identify from the Rutherford Institute or Alliance
16 Defense Fund is listed, nor is Mr. Cafferty or Mr.
17 Balliger listed. Looking back, if there is no
18 lawyer, you can look take a look at these see if you
19 see a lawyer there, but if there is no lawyer whose
20 name you can recollect, would it be safe to assume
21 that you didn't get legal advice during that
22 executive session?

23 A. We may have received legal advice from a
24 document. It's hard to say. We may have had

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1 Mr. Griffin was contacted and that Mrs. Hobbs wanted
2 to have something for that meeting to present to the
3 Board.

4 Q. Yes, sir.

5 A. But I got the impression that it was like
6 had you read up and we got some preliminary things
7 in that packet and as time went on we got more
8 definitive things, like court cases and background
9 and that sort of thing. To the best of my
10 recollection the first packet we got things was very
11 limited.

12 Q. You got something subsequently from
13 Mr. Griffin?

14 A. Yes, as I recall I think but it was very
15 preliminary.

16 Q. Page nine at the top following the
17 executive session under graduation ceremonies, you
18 are active on this issue Mr. Helms, it was moved by
19 Mr. Helms, seconded by Dr. Hattier, to refer the
20 graduation ceremonies matter to the policy committee
21 and the Board passed that unanimously. Do you
22 recall doing that?

23 A. Yes.

24 Q. So, on July 27 the Board referred the

17 (Pages 62 to 65)

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1 matter to the policy committee?	1 of the executive session, to discuss prayer issues
2 A. That's correct.	2 including School Board prayer?
3 Q. At some point you contacted Mr. Neuberger	3 A. As I recall, yes.
4 or the Rutherford Institute in connection with this	4 Q. As this meeting that was the only purpose
5 matter, is that right?	5 of the executive session?
6 A. Yes.	6 A. I think so.
7 Q. When did you do that, before or after this	7 Q. And it says to discuss collective
8 July 27 meeting?	8 bargaining and potential litigation, am I correct
9 A. I don't recall specifically when I	9 from that notation that you had had some indication
10 contacted the Rutherford Institute. We were	10 from Mrs. Hobbs by that date that there might be
11 notified that there was going to be a lawsuit, and I	11 litigation?
12 don't recall when that exact time was.	12 A. I don't recall, but that would be my
13 Q. Do you recall how you learned that there	13 assumption, yes.
14 was going to be a lawsuit?	14 Q. You came out of executive session at 11:14,
15 A. I think -- well, it had been discussed at	15 for a duration of four hours and 14 minutes?
16 some meeting. I don't recall any specifics. I	16 A. Right.
17 don't recall a specific date.	17 Q. Was the prayer issue, including School
18 Q. Do you remember who told you that there was	18 Board prayer the only topic of discussion during
19 going to be a lawsuit?	19 those four hours and 14 minutes?
20 A. I believe it came, and most always comes	20 A. I don't recall. It could very well have
21 from the superintendent, that there was the	21 been the discussions.
22 possibility of a lawsuit.	22 Q. Okay, now if you turn back to the minutes
23 Q. Okay, what you heard, Mrs. Hobbs said there	23 it says potential litigation number 05-01 PL, no
24 was a possibility that there would be a lawsuit?	24 action was taken regarding number 05-01 PL, do you
Page 67	Page 69
1 A. Yes, yes.	1 know what the number designates?
2 Q. And was that the summer of 2004?	2 A. Yes, I do, that's designating potential
3 A. I think so. I'm pretty sure, but I don't	3 litigation.
4 -- like I said I can't specifically recall.	4 Q. PL indicates potential litigation?
5 Q. Next I would like to show you the minutes	5 A. Yes.
6 from the August 23 special Board meeting which I	6 Q. Does the Board keep a file on each
7 think you have in front of you now, PX13 and 14.	7 potential claim in a packet or does the
8 So, PX13 is the executive session minutes.	8 superintendent of schools keep files?
9 A. Okay.	9 A. To the best of my knowledge, yes.
10 Q. Which represent the minutes of a chunk of	10 Q. Do you have any idea what the significance
11 the special Board meeting, the rest of which has	11 of 05-01 is, does it have any significance?
12 been redacted. So, let's go to 14 first?	12 A. I think it means the year '05 and it's from
13 A. Okay.	13 the school year, it's from, I am sure from the 2004
14 Q. On the first page of the minutes, which are	14 to 2005, so that would be the '05 school year, so
15 signed by Mrs. Hobbs, the call to order was at 7	15 this would have been the '05 school year, and the 01
16 o'clock. You moved at 7:01 to go into executive	16 first potential litigation of that year.
17 session?	17 Q. Got you.
18 A. Okay.	18 A. Well, I believe that's the designation.
19 Q. Am I correct in understanding that there	19 Q. Thank you. Let's go to Plaintiff's Exhibit
20 was no prayer between the call to order and motion	20 13.
21 to go into executive session? That's the special	21 Now, the word redacted is a word that
22 meeting?	22 lawyers use to let people know that something there
23 A. I don't recall.	23 has been blocked out of the original, and has been
24 Q. You made the motion, what was the purpose	24 masked out on these documents?

18 (Pages 66 to 69)

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1 A. Okay.	1 got?
2 Q. I believe it to be masked out because it is	2 A. I'm going to say conservative figure would
3 thought to represent attorney/client privilege	3 be around maybe 25, but it could have been as high
4 material?	4 as 50.
5 A. Okay.	5 Q. Did you know most of those people were
6 Q. But there is a small portion that remains	6 acquaintances or friends of yours?
7 which has two sentences, and I would like to talk to	7 A. Actually most of them were not.
8 you about those. One reads, "During the discussion	8 Q. Were they unanimous in their support of the
9 of this issue," do you know what this issue refers	9 Board's practice of opening its meetings with a
10 to? Is it the School Board prayer issue?	10 prayer?
11 A. That's what I am assuming, because at the	11 A. Yes.
12 top it says potential or pending litigation 05-01.	12 Q. Was that surprising to you?
13 Q. At the end of that sentence there is a	13 A. No.
14 discussion of, "Several Board members expressed that	14 Q. Were you surprised the people who supported
15 their constituents do not want the Board to change	15 the Board's practice of opening its meetings with a
16 its practice of opening the meetings with a prayer."	16 prayer would call you?
17 Does that refresh your recollection that the issue	17 A. No.
18 was School Board prayer?	18 Q. Would you say that it's widely known that
19 A. Yes.	19 you supported the Board's practice of opening the
20 Q. Which Board members expressed the opinion	20 meetings with a prayer?
21 that their constituents did not want the Board to	21 A. Yes.
22 change its practice of opening its meetings with	22 Q. Were most of the calls in words or
23 prayer?	23 substance, keep up the good work Mr. Helms, stick to
24 A. I don't recall specifically which ones, but	24 your guns?
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1 I believe it was a overwhelming majority, if not	1 A. Yes. There was more along the lines that
2 all.	2 we agree that we think you should continue what you
3 Q. Did you express that view?	3 are doing. It wasn't really stick to your guns that
4 A. Yes.	4 sort of thing, it was encouraging, yes.
5 Q. How were you able to determine that your	5 Q. How many constituents do you suppose there
6 constituents did not want the Board to change its	6 are in the Indian River School District?
7 practice?	7 A. I don't know.
8 A. I believe during that period of time we	8 Q. You have on the order of 8,000 students,
9 received several phone calls expressing that we,	9 right?
10 encouraging the Board to continue with that.	10 A. Yes, 7,000 something, yeah.
11 Q. When you say we received several phone	11 Q. There must be at least two or three times
12 calls, that's sort of a modest we in place of I	12 that number of residents, correct?
13 received some phone calls?	13 A. Yes, I would say at least two times.
14 A. Well, let's say I as a Board member.	14 Q. So, you had an average of 50 calls from
15 Normally when one receives a call several do. I say	15 people who wanted -- you would have been expected to
16 we, but more specific, I received a lot of phone	16 be calling you in support, among the many more
17 calls.	17 constituents in your district?
18 Q. And when you expressed the view that your	18 A. Correct.
19 constituents didn't want the Board to change its	19 Q. You weren't trying to suggest to the Board
20 practice, this was your district five constituents?	20 members that all of your constituents supported, did
21 A. Well, phone calls that I received, although	21 not want the Board to change its practice of opening
22 they were not all from my district, they were from	22 meetings with a prayer, were you?
23 all over the school district.	23 A. I can't recall exact words, but probably I
24 Q. How many phone calls are you estimating you	24 would have said something like the people who have

19 (Pages 70 to 73)

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1 called me have suggested that we continue. No, I
2 wouldn't have said all my constituents.
3 Q. That wouldn't have been the truth right?
4 A. No, I don't use words like all, never,
5 those sort of thing, because it always comes back to
6 haunt you.
7 Q. And the Board members concluded that they
8 didn't want to make a decision on that issue
9 correct?
10 A. I think that would be safe to say, yes.
11 Q. Is it correct that the reason the Board did
12 not feel that a decision could be made that evening
13 is that the Board wanted to get an additional or a
14 second legal opinion on the School Board prayer
15 issue?
16 MR. GOSSELIN: Objection.
17 A. I don't remember, it could have been. I
18 don't recall specifically somebody saying we want to
19 get a second opinion. I mean I don't remember those
20 words. I don't know why. The only thing I can tell
21 you for sure is I didn't want to make a decision
22 that night because I didn't feel we had enough
23 information.
24 Q. What information did you feel you needed

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1 there --
2 Q. I understand. Do you recall whether it was
3 at August 23 or another time do you recall receiving
4 advice from Mr. Griffin on the School Board prayer
5 issue?
6 MR. GOSSELIN: Objection.
7 Actually no I don't object to that, but
8 since we are getting into this territory I
9 am cautioning Mr. Helms give me time to
10 object because I may be instructing you not
11 to answer, but you can answer that
12 question.
13 A. Yes, Mr. Griffin gave us advice.
14 Q. In light of the fact that Mr. Griffin is
15 recorded as being present under other visitors and
16 staff in attendance on the PX14 regular minutes of
17 the August 23 meeting, and the fact that it appeared
18 the only purpose of the executive session and the
19 meeting was to deal with this school prayer issue,
20 School Board prayer issue, do you believe that your
21 advice from Mr. Griffin came during this executive
22 session?
23 A. Yes.
24 Q. And you agreed, I take it, with the

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1 that you didn't yet have?
2 A. I wanted somebody to tell me that we were
3 breaking the law, and we were going against -- if
4 someone had told us that we were breaking the law,
5 and that what we are doing was illegal, then I would
6 have said then we need to stop it. But I needed
7 somebody, you know, like a judge or someone to tell
8 me, and at that point we had never been showed that.
9 So, I don't know if it was to get a legal
10 opinion or to get a second opinion, I can't tell you
11 that. But I know my stance was I need somebody to
12 tell me that what I'm doing is wrong.
13 MR. GOSSELIN: You should call Mr.
14 Allingham.
15 Q. The minutes, the full meeting minutes,
16 reflect that Mr. Griffin was in attendance?
17 A. Okay.
18 Q. Do you recollect that in the four hours and
19 14 minute executive session Mr. Griffin was also in
20 attendance?
21 A. I don't recall that specifically, no, but
22 if you say he was there then he was there.
23 Q. You should never accept --
24 A. I mean, if the minutes reflect that he was

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1 sentiment of the Board that a decision could not be
2 made this evening regarding whether or not to change
3 our past practice?
4 A. Yes.
5 Q. And in your mind, I'm not talking about
6 everybody else's mind, but in your mind that was
7 because no one had told you definitively that what
8 you were doing was illegal or unconstitutional?
9 MR. GOSSELIN: Objection and to
10 the extent you can answer that without
11 revealing what Mr. Griffin told you.
12 Q. I want to know what your reason for
13 agreeing with that sentiment was?
14 A. Okay. My opinion was that we had not
15 received information that said that what we were
16 doing was illegal and breaking the law.
17 Q. And what you were looking for was some kind
18 of definitive statement, is that correct?
19 A. On my part I was looking for some court
20 ruling, or something that said that we couldn't do
21 it.
22 Q. Was there a discussion at the Board level
23 of the need for a definitive statement that what you
24 were doing was unconstitutional or illegal before

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1 you would change your existing practice?
 2 A. I don't recall that, but I'm sure that was
 3 probably brought up because I've heard it before
 4 whether it was at that meeting or some other
 5 meeting, but I've heard those statements before in
 6 discussions.

7 Q. Let me ask you a more general question Mr.
 8 Helms, as a school Board member you are familiar
 9 with the practices of the Board, correct?

10 A. Yes.

11 Q. Is it fair to say that from your
 12 perspective you would prefer to continue the
 13 existing practices of the Board unless someone
 14 demonstrates to you that what you're doing is
 15 definitively illegal or unconstitutional?

16 A. I'd say for the most part that statement is
 17 correct. I am a law abiding citizen, I want to do
 18 what the law says, however, if we are doing
 19 something wrong then I want somebody to show me.
 20 I'm just not going to take somebody's word for it.
 21 I know it was maybe a little bit humorous but
 22 because of Mr. Allingham tells me you can't do that,
 23 I need something more than that, if you understand
 24 what I'm saying.

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1 A. My thought process would be this, I need to
 2 know in our area, where we are a Board of Education,
 3 that it's unconstitutional for us to open a meeting
 4 with prayer. And I didn't have a document or
 5 anything that said that to me. So was I looking for
 6 someone's opinion or was I looking for someone's
 7 thoughts, that's fine, but I need something more
 8 definitive than that for me to change my mind.

9 Q. Mr. Griffin's advice to the Board on August
 10 23rd, by that point had you received the
 11 supplemental materials that you -- remember we
 12 talked about June 17th, you had some stuff that you
 13 thought was maybe put together in a hurry, and you
 14 subsequently got supplemental materials, by August
 15 23rd had you gotten everything that you were going
 16 to get from Mr. Griffin?

17 A. I don't recall specifically, but I would
 18 say probably we had received a lot of information
 19 from Mr. Griffin at that time, yes.

20 Q. I don't want to know what his advice was, I
 21 just want to know whether Mr. Griffin had given you
 22 advice as to whether your existing practice was
 23 constitutional or unconstitutional, by the
 24 conclusion of the August 23 executive session?

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1 Q. Yeah, I do.
 2 A. However, if some point in time somebody
 3 proves to me and shows me that it's unconstitutional
 4 and you can't do that, then that's what I want to
 5 do. I want to abide by the law and I want to do
 6 what's right. However, I want to be showed.

7 Q. In your desire that led to your joining
 8 this decision -- this feeling that a decision could
 9 not be made on August 23rd, were you looking for a
 10 statement from a judge about your particular
 11 practice, were you looking for an opinion from legal
 12 counsel, were you looking for an opinion from a
 13 judge on a practice that was similar to yours. What
 14 precisely would give you, I know it's not an opinion
 15 from Tom Allingham, but what would give you adequate
 16 comfort that you should change your practice?

17 MR. GOSSELIN: And my same
 18 admonition, to the extent that you can
 19 answer this without revealing directly or
 20 indirectly the information you received
 21 from Mr. Griffin, you can answer the
 22 question.

23 Q. I just want to know what you were looking
 24 for?

1 A. I recall Mr. Griffin gave us his opinion, I
 2 am not sure whether he used the words
 3 unconstitutional or constitutional. I know we
 4 received --

5 MR. GOSSELIN: Just, I think he's
 6 answered your question on this.

7 MR. ALLINGHAM: I agree, I agree,
 8 I appreciate the answer.

9 Q. All right so you were looking for something
 10 more, were the other Board members looking for
 11 something more as well?

12 A. As I recall some of those statements maybe
 13 made, but I don't recall anything specifically.

14 Q. Can you recall another instance in which
 15 Mr. Griffin had given you a presentation or his
 16 opinion or his advice and the Board had decided to
 17 look elsewhere for more legal advice?

18 A. I know we've done that but I don't know, I
 19 was sitting here trying to think of something
 20 specifically that I could tell you, but I'll just
 21 say this, we have not always gone by what
 22 Mr. Griffin has asked us without asking someone
 23 else. I know that's happened on a couple of
 24 occasions, and I will say this, Mr. Griffin is a

21 (Pages 78 to 81)

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1 **very capable and good lawyer, but there have been**
 2 **occasions when we decided to ask someone else's**
 3 **opinion, yes.**
 4 Q. But as you sit here today you can't
 5 remember what they were?
 6 A. I can't think of anything specific. I'm
 7 sort of recollecting something to do with a teacher,
 8 but I don't know the specifics of it, but I think
 9 there was -- we brought another lawyer in one time
 10 to handle the case rather than Mr. Griffin, and I
 11 don't remember the specifics, but I think it had
 12 something to do with a teacher.
 13 Q. How long has Mr. -- Mr. Griffin is the
 14 Board's attorney, is that right?
 15 A. Well, no. He was at the time, but we've
 16 just changed attorneys.
 17 Q. Who is the Board's attorney now?
 18 A. Mr. Dave Williams.
 19 Q. What was the reason for the change?
 20 A. Periodically we re-advertise for lawyers
 21 and there was a few members of the Board wanted it
 22 opened up again, and we did so. We received their
 23 whatever you want to call it their --
 24 Q. Proposals?

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1 the last maybe four months, five months.
 2 Q. So, this year?
 3 A. Yes.
 4 Q. Okay. And would that be after the March
 5 2006 election?
 6 A. Yes. Let me clarify it by saying that when
 7 I mentioned Dr. Isaacs and Mr. Walls, it had been
 8 mentioned before, but it was never reopened. It was
 9 just this year it was reopened.
 10 Q. And so who were the moving Board members
 11 behind the reopening of the issue this year?
 12 A. I think it was, I want to say like Dr.
 13 Hattier, Mr. Hughes, and some of the new Board
 14 members that come on board just felt that it was
 15 time to maybe reopen it and look and see if we could
 16 get someone maybe at a better rate, or someone who
 17 had a better reputation. I can't speak for all of
 18 the reasons, but they just felt that it was time to
 19 reopen it.
 20 Q. A couple of sort of broader questions, how
 21 long had Mr. Griffin been the Board's attorney just
 22 up on to the summer of this year?
 23 A. Wow, this would just be a guess, I want to
 24 say in the late 1990s there was -- might have been

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1 A. Resume, proposals, whatever you want to say
 2 and based on that we -- the Board decided to change
 3 attorneys. That's just been done recently.
 4 Q. Who were the Board members who wanted to
 5 reopen it?
 6 A. I would rather not get into personalities.
 7 Q. I'd like to know?
 8 A. Well, some people in the past who have
 9 expressed not being totally satisfied with
 10 Mr. Griffin has been Dr. Hattier, Mr. Rick Cohee,
 11 Mr. Mark Isaacs, Dr. Isaacs who is no longer on the
 12 Board, Mr. Walls who is no longer on the Board. We
 13 have some new Board members that don't know
 14 Mr. Griffin that well and know his history, so they
 15 really didn't care one way or the other.
 16 There were a few of us who liked
 17 Mr. Griffin and would of liked him to stay, but we
 18 were sort of out voted.
 19 Q. Your earlier testimony was that there were
 20 a few Board members who wanted to reopen it?
 21 A. Yes.
 22 Q. When was that -- when did that reopening
 23 take place?
 24 A. As I recall the timeline would be within

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1 sooner. I'm not sure he has been our attorney for a
 2 while. Six to ten years, something like that.
 3 Q. Did the replacement of Mr. Griffin -- was a
 4 Board vote taken on that issue?
 5 A. Yes.
 6 Q. Was it unanimous?
 7 A. Yes. To the best of my knowledge I think
 8 it was unanimous. I'd have to refer to the minutes
 9 to make sure, but I think it was.
 10 Q. I think I actually have not seen that in
 11 the minutes, so I can't help you. I take it at
 12 least you did vote for the replacement?
 13 A. Yes.
 14 Q. I'd understood your testimony earlier to
 15 have been that you liked Mr. Griffin and would have
 16 liked him to stay?
 17 A. Yes.
 18 Q. Does your vote for the replacement of
 19 Mr. Griffin indicate that you prefer Board decisions
 20 to be unanimous where possible?
 21 A. Where possible, yes. Yes, I think my
 22 opinion is if it's possible it should be unanimous,
 23 yes.
 24 Q. And I'm just speaking of yourself now, but

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1 is it a fair statement that unless you feel very
 2 strongly about an issue you will go along with the
 3 majority?
 4 **A. In my case is that unless you can convince**
 5 **me otherwise, that if I don't have any strong**
 6 **opinions then I will listen to the majority of the**
 7 **Board, and if that's what they want then I will vote**
 8 **with them, unless there is something really strong**
 9 **that they have to convince me otherwise.**

10 Q. The Board -- how long have you been a Board
 11 member?

12 **A. Since 1991.**

13 Q. In that period, that's now 15 years, it's a
 14 good long time, is it your sense that virtually all
 15 of the decisions of the Board that go to a Board
 16 vote are unanimous votes?

17 **A. No.**

18 MR. ALLINGHAM: All right, we need
 19 to change the tape.

20 MS. DUPHILY: We are going off
 21 the record at approximately 5:35 p.m..

22 MS. DUPHILY: Back on the record
 23 at 5:40 p.m..

24 Q. I understand, Mr. Helms, that on the break

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1 **A. Excuse me, Board members hearing that sort**
 2 **of sided with Mrs. Hobbs before she retired and said**
 3 **if that's the case that maybe we should start**
 4 **looking for another attorney.**

5 **Then when Dr. Bunting became superintendent**
 6 **we started hearing the same things from Dr. Bunting,**
 7 **where she would try to contact Mr. Griffin and she**
 8 **would either get an associate or he wouldn't get**
 9 **back in a timely manner.**

10 **At that point in time some of the other**
 11 **Board members said well maybe it's time to open it**
 12 **up and see if we can find someone better. But it**
 13 **had nothing to do with this case. And as far as I**
 14 **am concerned there were two or three of us who were**
 15 **very supportive of Mr. Griffin for him to stay, and**
 16 **it had nothing to do with the prayer case.**

17 **That's basically all I wanted to say.**

18 Q. You consider it important for the Board's
 19 attorney to understand the constituencies of the
 20 district?

21 **A. Would you mind explaining that?**

22 Q. I appreciate you saying that you are not
 23 sure you understand. Do you consider it a favorable
 24 quality in the Board's attorney that the Board

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1 that you and Mr. Gosselin had a discussion and that
 2 you would like to make a clarification of some kind
 3 about the Board's replacement of Mr. Griffin with
 4 Mr. Williams?

5 **A. Yes.**

6 Q. Why don't you go ahead and give me that?

7 **A. Thank you for your opportunity. I just**
 8 **want just wanted to say that I'm one of the reasons**
 9 **why Mr. Griffin is our Board attorney. I think he**
 10 **is a very competent lawyer and very nice man.**

11 **The reasons why Mr. Griffin was replaced**
 12 **was the previous superintendent, Miss Hobbs**
 13 **expressed to the Board several times where she had**
 14 **problems with Jim getting back to the Board on**
 15 **different matters in a timely fashion. One of the**
 16 **reasons why recently, I think it's been in the last**
 17 **year or so, Mr. Griffin is also the Board attorney**
 18 **for the County Council, and that has taken up quite**
 19 **a bit of his time, and so Miss Hobbs would always**
 20 **express to the Board where she had contacted**
 21 **Mr. Griffin and she didn't feel as though he got**
 22 **back to her as quickly as she wanted.**

23 **Also some other Board attorneys --**

24 Q. Board members, not attorneys.

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1 attorney understand Indian River and the attitudes
 2 of the Indian River constituencies?
 3 **A. That may be all well and good, but I think**
 4 **it's more important that they understand the letter**
 5 **of the law and do everything to protect this**
 6 **district no matter what the Board may say, or no**
 7 **matter what the community may say. The most**
 8 **important thing is we hire a Board attorney to**
 9 **protect us, so that we don't have to go through**
 10 **lawsuits and that sort of thing.**

11 **So, I think it would be more important that**
 12 **we felt very confident with his knowledge of the law**
 13 **and that sort of thing.**

14 Q. Well, in this case Mr. Griffin's knowledge
 15 of the law was not the issue it was his
 16 responsiveness, is that right?

17 **A. Not for me.**

18 MR. GOSSELIN: In this case you
 19 mean getting rid of him?

20 Q. In getting rid of Mr. Griffin and replacing
 21 him with Mr. Williams?

22 **A. When you said this case I thought you**
 23 **meant --**

24 Q. The people who have the problems with

23 (Pages 86 to 89)

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1 Mr. Griffin didn't have problems with his knowledge
2 of the law, they had problems with his
3 responsiveness?

4 **A. That's correct.**

5 Q. Okay.

6 **A. Yes.**

7 Q. Did you share the views expressed at the
8 public commentary at the August 24th meeting that
9 people from New Castle County should not try to
10 impose their views on people in Sussex County?

11 **A. They are not my views, no.**

12 Q. You think the opinions of those folks up
13 north are just as valid as the people in Sussex
14 County?

15 **A. Everybody is entitled to their opinion.**

16 Q. And you evaluate each opinion according to
17 its source and its support?

18 **A. I try to evaluate everybody's opinion on
19 their opinions, not who they are, where they came
20 from.**

21 Q. Fair enough. Now, the process of opening
22 it up, was that a process of opening the Board
23 position, the Board attorney position, up for
24 proposals from anybody who wanted to make a proposal

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1 position provide a package of material describing
2 their qualifications and services?

3 **A. Yes. Some were more detailed than others,
4 as I recall.**

5 Q. And how did the board vote on the issue,
6 was there a recommendation from the superintendent
7 which the Board voted up or down, or did the Board
8 look at the five or six or whatever the number was
9 proposals, from the applicants to express its own
10 judgment as to which was the best candidate?

11 **A. I'd have to look at the minutes. Typically
12 we ask for a recommendation and then the Board votes
13 on the recommendation. I can't recall specifically
14 how that was done, but typically we ask for a
15 recommendation.**

16 Q. Did the rates quoted to you have any impact
17 on the decision?

18 **A. I believe there was some discussion about
19 that, yes, some were higher than others, yes.**

20 Q. Was Mr. Williams' rates the highest of the
21 proposals?

22 **A. I don't recall. I don't recall.**

23 Q. All right, I want to go back to a topic of
24 discussion that we looked at before the break, and

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1 to become, to fill that position?

2 **A. Yes, I think there was I'm not sure how
3 widespread we advertised it, when I say that I mean
4 I don't know if it went in The News Journal, I'm not
5 sure about that, but the intent was to open it up to
6 anyone who wanted to be the Board attorney. We
7 didn't go nationwide of course, but we opened it up
8 for anyone who wanted to put in a proposal.**

9 Q. Limited, I assume, to Delaware attorneys?

10 **A. Probably, but I'm not sure.**

11 Q. Did Dr. Bunting run that process, that
12 proposal process?

13 **A. She may have or was the overseer, but I'm
14 not sure that maybe our personnel department didn't
15 take care of that.**

16 Q. Ultimately though that was a Board
17 decision, correct, whom to hire?

18 **A. The final vote was the Board's vote, yes.**

19 Q. Do you know how many people applied for the
20 position?

21 **A. As I recall it was like five or six maybe.**

22 Q. And did Mr. Griffin apply for the position?

23 **A. Yes, he did.**

24 Q. Did each of the people who applied for the

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1 that was this, I asked you whether as a general
2 proposition it was fair to say that your approach
3 was that you would prefer to continue the Board's
4 past practice unless someone could tell you in a
5 reasonably definitive way that what the Board had
6 done in the past was illegal or unconstitutional.

7 I want to ask you how you use that approach
8 when what is being considered is a new action or a
9 new policy. Do you require that someone demonstrate
10 to you that the new action or new policy proposed is
11 definitively constitutional or legal?

12 Do you understand my question?

13 **A. I think so.**

14 Q. Okay?

15 **A. And I'll try to answer that with perhaps a
16 little bit of past practice procedure. What
17 normally happens is if someone brings up an issue,
18 and the Board feels that they need a new policy or
19 they need to change a policy or whatever, it's
20 normally handed over to the policy committee. As
21 part of that research our Board attorney is
22 contacted and through coordination between the
23 policy committee and our Board attorney where drafts
24 are made, research is done, it goes back and forth**

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 1 and when we come -- when the policy finally comes to
 2 the Board for a first reading, we as the Board
 3 expect and assume that all the legalities have been
 4 handled and that the Board policy as it is presented
 5 for the first reading is final.

6 Q. Final being?

7 A. Legal.

8 Q. You can be assured that someone has
 9 definitely advised that it's legal and
 10 constitutional?

11 A. That is the expectation, yes.

12 Q. Just to explore a couple of points in that,
 13 you are not on the policy committee so you are one
 14 of the people on the Board who when the policy
 15 committee emerges from that process with a new
 16 proposed policy you assume that that has been vetted
 17 for legality?

18 A. Yes.

19 Q. Okay. Have you ever served on the policy
 20 committee?

21 A. No.

22 Q. I've just forgotten, which committees are
 23 you on?

24 A. I'm right now I'm on the building and

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 1 prayer to the policy committee, do you recall that?

2 A. I recall referring it to the policy
 3 committee, yes.

4 Q. At the August 23 executive session the
 5 Board decided it couldn't make a decision on whether
 6 to maintain or deviate its past practice. In your
 7 case because you wanted someone to tell you
 8 definitively that the past practice was not legal or
 9 not constitutional. Dr. Hattier and Mr. Bireley
 10 testified that they were looking for additional
 11 legal advice on the issues presented by the School
 12 Board prayer problem.

13 A. Okay.

14 Q. My first question to you is whether it was
 15 you looking for definitive legal advice that the
 16 practice was unconstitutional, or as Dr. Hattier and
 17 Mr. Bireley said the Board was looking for
 18 additional advice on the issue of First Amendment
 19 prayer -- sorry, on the issue of in Dr. Hattier's
 20 case First Amendment issues and in Mr. Bireley's
 21 case on School Board prayer. Was someone from the
 22 Board designated to go get additional legal advice
 23 on these issues?

24 A. I don't recall anyone being specifically

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 1 grounds committee, the athletic fields oversight
 2 committee. I have been negotiations past. I believe
 3 that's it, to the best of my knowledge.

4 Q. I think you have in front of you PX12
 5 somewhere?

6 A. No, I don't think so.

7 Q. Here you go.

8 A. Okay, thanks.

9 Q. Have you ever seen PX12 before?

10 A. Yes, I have.

11 Q. At the top left of the first page in
 12 brackets it says, "For release to the general public
 13 proposed School Board Prayer Resolution," dated
 14 8/30/04. This is prepared by the Rutherford
 15 Institute and the Neuberger firm?

16 A. Yes.

17 Q. Do you believe that you saw this document
 18 for the first time at some point earlier than August
 19 30, 2004?

20 A. I don't recall. I mean I don't recall
 21 specific date. I know I received this but I don't
 22 know what the date was.

23 Q. On August 24, 2004 at the Board meeting,
 24 the Board referred the matter of the School Board

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 1 designated because I remember that there were a
 2 couple of us who were checking into different
 3 organizations. Mr. Hastings had been looking on the
 4 Internet for some organizations and I think like I
 5 said I contacted two organizations ACLJ, is that the
 6 Pat Robertson?

7 Q. I don't know.

8 A. And the Rutherford Institute. And the
 9 Rutherford Institute was the first one who responded
 10 with the pro bono, if you will, and so I proceeded
 11 that way. I also remember receiving some
 12 information I think at some point in time from
 13 Mr. Hastings and a group that he had contacted, but
 14 I don't recall the specific group. So, was anyone
 15 designated as the point man, if you will, I don't
 16 recall that to be that way.

17 Q. So, am I correct that several Board members
 18 were acting on their own initiative to try to get
 19 information on the issues?

20 A. Well, I know I was.

21 Q. All right, and you have personal knowledge
 22 that Mr. Hastings was acting on his own initiative
 23 to get some information?

24 A. The best of my knowledge he was acting on

25 (Pages 94 to 97)

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1 **his own.**
 2 Q. Do you remember that Dr. Hattier was
 3 contacting an organization, something called the
 4 Alliance Defense Fund?
 5 **A. I remember the Alliance Defense Fund was**
 6 **mentioned. I'm not sure whether it was Dr. Hattier**
 7 **or not, but I remember that fund, well yes.**
 8 Q. You said that Mr. Hastings obtained some
 9 materials from an organization that you can't recall
 10 the name of?
 11 **A. Right.**
 12 Q. Did he share those materials with the
 13 Board?
 14 **A. I believe he did.**
 15 Q. Do you still have them?
 16 **A. No, I don't.**
 17 Q. Did the materials present legal advice on
 18 the issue of School Board prayer?
 19 **A. No, I think it was basically Mr. Hastings**
 20 **had contacted them and they sent a letter back**
 21 **saying that they might be willing to take the case**
 22 **but they needed the particulars or whatever. There**
 23 **was no legal advice or anything like that.**
 24 Q. Was that followed up on, did anyone send

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1 right?
 2 **A. Yes.**
 3 Q. Is that your phone number 436-7576?
 4 **A. That's my fax number, yes.**
 5 Q. And do you recall sending this material to
 6 Mr. Walls?
 7 **A. Yes, I do.**
 8 Q. Did you send it to each of the Board
 9 members?
 10 **A. As I recall I don't think so, I think I**
 11 **just sent it to Mr. Walls, I'm not sure.**
 12 Q. I hope that this will help you pinpoint the
 13 point in time when you contacted the Rutherford
 14 Institute?
 15 **A. Right.**
 16 Q. It had to have been before September 2nd?
 17 **A. It had to have been before September 2nd.**
 18 Q. Did you receive this material from the
 19 Rutherford Institute or from the Neuberger Firm?
 20 **A. As I recall I received this from Mr.**
 21 **Neuberger.**
 22 Q. And can you tell me how far in advance of
 23 your transmitting it to Mr. Walls you got it from
 24 Mr. Neuberger?

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1 them the particulars?
 2 **A. I don't believe it was. Not to my**
 3 **knowledge.**
 4 Q. And when you contacted the Rutherford
 5 Institute you got a reply from them you said?
 6 **A. Yes, I did.**
 7 Q. Again to try to pinpoint in time, was that
 8 before or after the August 23, August 24 meetings?
 9 **A. I know I look like, I don't know, I don't**
 10 **have a very good memory but --**
 11 Q. Not at all?
 12 **A. Dates are not my thing. I can't recall**
 13 **specifically. My wife has trouble with me as far as**
 14 **memory is concerned.**
 15 Q. Well, let me show you, and I think you have
 16 this one in front of you, it's PX34. That would be
 17 near the bottom of the stack?
 18 **A. Okay, thank you.**
 19 Q. The handwriting on the first page of PX34
 20 is yours, is that correct?
 21 **A. That's correct.**
 22 Q. And this is a fax that you sent to
 23 Mr. Walls, according to the fax line at least, on
 24 September 2, 2004 at 3:28 in the afternoon, is that

1 **A. No, not unless there is a date somewhere**
 2 **that tells me. I don't recall how soon I received**
 3 **this.**
 4 Q. Did you send it to Mr. Walls because he was
 5 head of the policy committee?
 6 **A. I believe I sent to Mr. Walls because he**
 7 **was president.**
 8 Q. He was also the head of the policy
 9 committee?
 10 **A. Yes, he was.**
 11 Q. As of April 24 the matter of School Board
 12 prayer had been given to the policy committee, does
 13 that suggest to you that you sent it to Mr. Walls in
 14 his capacity as head of the policy committee?
 15 **A. No. As I recall I sent it to Mr. Walls**
 16 **because he was the president and my intent was here**
 17 **look at this see what you think whether up want to**
 18 **present this to the full Board.**
 19 Q. Let me ask you a question?
 20 **A. Okay.**
 21 Q. Would it be your practice if you got
 22 something from somebody like Mr. Neuberger to review
 23 it promptly? I mean you wouldn't let it sit on your
 24 desk for a week, would you?

26 (Pages 98 to 101)

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1 A. **Oh, definitely not a week no.**
2 Q. 24 hours you'd take a look at it?
3 A. **Probably so.**
4 Q. Once you had looked at it, is it your
5 expectation that you would have sent it promptly to
6 Mr. Walls?
7 A. **Within a day or so I would say yes.**
8 Q. So, is it reasonable to assume that you got
9 this material from Mr. Neuberger within three or
10 four days of the date you sent it to Mr. Walls?
11 A. **Yes.**
12 Q. So, with that in mind can we reconstruct
13 the sequence that on August 23 and August 24 you did
14 not have this material, that you received it at some
15 point between August 23 and August 24 and then
16 resent it to Mr. Walls on September 2nd?
17 A. **I don't recall specifically but that would**
18 **be a reasonable assumption, but I don't recall.**
19 Q. Let me take one other effort at this?
20 A. **Okay.**
21 Q. If you look at page, it's the one that has
22 717, at the lower right-hand corner BPD717?
23 A. **Okay.**
24 Q. It's the first substantive paragraph above

1 A. From my conversations with Mr. Whitehead --

2 Q. Let me ask you to answer my question first.

3 MR. GOSSELIN: I want him to

4 answer the question. I don't want you to

5 argue at some point in the future that

6 we've waived the attorney/client privilege

7 with respect to Mr. Neuberger. I don't

8 know if we can agree to that or not?

9 MR. ALLINGHAM: I can't, I'm not

10 going to agree to permit you to have the

11 witness answer one question or not.

12 MR. GOSSELIN: Then I instruct him

13 not to answer. I'm trying to let you get

14 through this.

15 Q. The statement that is made, that I just

16 read to you, in your opinion would that be

17 sufficiently definitive to enable you to form a view

18 as to whether the Board's practice was

19 constitutional or unconstitutional?

20 A. It helped me arrive at my opinion that what

21 we were doing was okay, if that's what you're

22 asking. I mean, in other words, I made a statement

23 earlier that somebody would have to show me where

24 it's unconstitutional and listening to this, or

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1 the numbered paragraphs on that page. You'll see it
2 says, "Thus it is the opinion of legal counsel that
3 the Supreme Court's decision in *Marsh v. Chambers*,
4 which unlike the Coles decision, is binding
5 precedent in Delaware, compels the conclusion that
6 the Indian River School District's tradition of
7 opening its meetings with a brief invocation is
8 constitutionally permissible."

9 **A. I see that paragraph.**

10 Q. And do you remember getting advice like
11 that from Mr. Neuberger?

12 MR. GOSSELIN: Objection,
13 don't answer that.

14 Q. Well, you got this piece of paper from
15 Mr. Neuberger, right?

16 **A. Did I receive this from Mr. Neuberger?**

17 Q. Yes.

18 **A. Yes.**

19 Q. When you read that paragraph did you
20 understand that Mr. Neuberger and the Rutherford
21 Institute were giving you legal counsel's opinion
22 that the Indian River School District's tradition of
23 opening its meetings with a brief invocation is
24 constitutionally permissible?

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1 reading this, I felt as though we were within our
2 rights to continue.
3 Q. Yeah, and my question was so far from
4 demonstrating to you that your existing practice was
5 unconstitutional this document tells you without
6 equivocation that your existing tradition was
7 constitutional, correct?
8 A. Well, I don't know how to explain it other
9 than what I just said. I'm not going to say to you
10 that -- in my opinion this told me that what we were
11 doing was permissible, so, why stop? Continue until
12 somebody comes in and tells the Indian River School
13 District and Reggie Helms you're illegal, what you
14 are doing is unconstitutional and you need to stop.
15 And at that point in time as a law abiding citizen
16 we will stop.
17 Did you ever have a conversation with
18 Mr. Whitehead at the Rutherford Institute?
19 A. Yes.
20 Q. How many such conversations?
21 A. As I recall three to five, not many.
22 Q. Over the course of how long a period?
23 A. Maybe a month or so.
24 Q. And was that around the time of this

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1 memorandum?

2 **A. As I recall I had a conversation with**

3 **Mr. Whitehead before this and then after this I had**

4 **a few more conversations with him.**

5 Q. Tell me what you recall was the substance

6 of your conversation before this memorandum with

7 Mr. Whitehead?

8 MR. GOSSELIN: Objection,

9 don't answer that.

10 MR. ALLINGHAM: Attorney/client

11 privilege?

12 MR. GOSSELIN: Yes.

13 Q. Tell me the substance of your conversations

14 with Mr. Whitehead after you received this document?

15 MR. GOSSELIN: Objection, don't

16 answer that. Again, is there a good faith

17 basis --

18 MR. ALLINGHAM: I need to make a

19 record, Jason, come on, I am going

20 quickly.

21 MR. GOSSELIN: You're

22 wasting time.

23 MR. ALLINGHAM: I don't think

24 so.

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1 MR. ALLINGHAM: I call for its

2 production and I won't ask anymore

3 questions about this business.

4 MR. GOSSELIN: You'll send me a

5 letter?

6 MR. ALLINGHAM: I will.

7 MR. GOSSELIN: I'll respond to

8 it.

9 Q. Do you know who drafted the -- and if you

10 look at Exhibit 9, which is in the pile in front of

11 you, it's the Board Policy itself?

12 **A. No, I don't have it. Yes.**

13 Q. Got it?

14 **A. Yes.**

15 Q. In order to cut things short I'm just going

16 to represent to you that is the School Board Prayer

17 Policy adopted on October 19th?

18 **A. Yes.**

19 Q. Who drafted that policy?

20 **A. The best of my knowledge this was a product**

21 **of the policy committee.**

22 Q. Do you know on what the policy committee

23 based its drafting process?

24 **A. Not specifically, no.**

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1 Q. You testified earlier that you weren't sure

2 whether Mr. Neuberger represented you in connection

3 with this litigation. I think you also testified

4 that you weren't sure whether Mr. Neuberger

5 represented you generally. Let me ask the same

6 question with respect to the Rutherford Institute,

7 have you ever been represented by the Rutherford

8 Institute?

9 MR. GOSSELIN: Objection.

10 Well, he can answer that question but -- I

11 will let him answer the question and I will

12 decide if I need to object to any follow-up

13 questions.

14 Q. That seems fair. Have you ever been

15 represented by the Rutherford Institute?

16 **A. I'd have to review the document that I**

17 **signed. I'm not sure whether the Rutherford**

18 **Institute and Tom Neuberger are one of the same or**

19 **not, I'm not sure.**

20 Q. You referred to the document earlier. You

21 signed some document that in your mind established

22 some kind of relationship with Mr. Neuberger and

23 maybe with the Rutherford Institute, correct?

24 **A. Yes.**

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1 Q. Do you understand that the Rutherford

2 Institute contributed to that process?

3 **A. All I can testify is that I sent this to**

4 **Mr. Walls and as you can see it may have been, I**

5 **don't know specifically that he did.**

6 Q. Well, if you look at the page of the

7 Rutherford Institute and Neuberger memorandum that I

8 was looking at earlier, at the bottom it has one,

9 two and three and on the next page it has four and

10 five?

11 **A. Right.**

12 Q. You can recognize without comparing it word

13 by word that it's virtually verbatim to the final

14 policy as adopted?

15 **A. That's why I'm saying you can see, but do I**

16 **have knowledge that that's what they based it on,**

17 **nobody told me that but as you can see.**

18 Q. Did the memorandum of the Rutherford

19 Institute and the Neuberger Firm, which constitutes

20 PX34, form part of the consideration that you took

21 into account in voting to adopt Board Policy BDA.1

22 the School Board Prayer Policy?

23 **A. Yes.**

24 Q. Did any other Board member tell you that it

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28 (Pages 106 to 109)

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1 formed an important part of their consideration of
 2 the consideration that they took into account in
 3 voting for adoption of the Board Prayer Policy?
 4 **A. No, they didn't, they didn't say that.**
 5 Q. Look at Exhibit 9, please?
 6 **A. Okay.**
 7 Q. And I'm going to ask you Mr. Helms just to
 8 take a minutes to read through the policy?
 9 **A. Sure.**
 10 Q. Ready?
 11 **A. Yes.**
 12 Q. What in your mind was the purpose of
 13 offering -- is the purpose of opening the Board's
 14 meetings with a prayer or a moment of silence?
 15 **A. Exactly what it says.**
 16 Q. To solemnify the proceedings?
 17 **A. Yes. To me the work that we do is very
 18 important. We have the best interests of our
 19 students, our staff, and our district and I think
 20 any time you enter into important work, if you will,
 21 of this nature, that in my way of thinking you
 22 should invoke the wisdom and guidance of a higher
 23 power, if you will, whatever you see that to be.
 24 **But I think that this simply says that we****

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1 **it's just something that they do. We've had Board
 2 members that have requested a moment of silence.
 3 Although there are only two mentioned here I think
 4 the leeway is that whatever you feel as an
 5 individual that you want to do, then that's what
 6 we've been doing.**
 7 **So, although the policy mentions prayer and
 8 a moment of silence, there have been other occasions
 9 where people have read something from the Internet
 10 and simply that is to just like it says here, it's a
 11 very important job that we have, we have over 7000
 12 students, and staff and whatever. It's a
 13 responsibility that I don't take lightly, and for
 14 myself I would love to have someone giving me wisdom
 15 and guidance and in my case it's my Heavenly Father.
 16 **Well, in your case it may be something
 17 different and some other Board member it maybe a
 18 different way. However, that is the intent as I see
 19 it. My feeling.**
 20 Q. Let me ask you a question about whether --
 21 I'm going to give you a hypothetical practice and
 22 ask you whether in your judgment it would accord
 23 with the policy. I'd like you to imagine a
 24 hypothetical Board member who is an atheist. A very**

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1 **are asking for wisdom and guidance to make good
 2 sound decisions.**
 3 Q. And the means of solemnifying the
 4 proceedings specified in the Board policy are two,
 5 is that correct? One is to offer a prayer and the
 6 other is to offer a moment of silence?
 7 **A. As I see there are two mentioned, prayer
 8 and moment of silence.**
 9 Q. And am I correct that the Board policy
 10 authorizes Board members to open the meeting at the
 11 invitation of the Board president and on a rotating
 12 basis that's specified here, with the limitations
 13 that are specified, in one of two ways and only one
 14 of two ways, a prayer or a moment of silence?
 15 **A. Well, I'll speak to that issue like this.**
 16 **Your definition of a prayer and my definition of a
 17 prayer may be two separate things. Therefore, I
 18 know that there are some Board members who have
 19 opened the meeting with something that they received
 20 from the Internet which may be from George
 21 Washington or Thomas Jefferson or whatever. There
 22 have been some Board members that pray simply as
 23 they are led.
 24 **In other words, there is nothing written,****

1 serious Board member, and a conscientious Board
 2 member, and one who takes his duties extremely
 3 seriously works very hard as I think most of your
 4 board members do at their duties, and when the time
 5 comes for rotationally for that member to solemnify
 6 the proceedings, he looks into the audience and at
 7 his fellow Board members and says I would like to
 8 make it clear that I am not resorting to a higher
 9 power in making the decisions that I seek to make
 10 today, and that I do not believe in a higher power.
 11 **That in fact I think it is a waste of time
 12 to appeal to a higher power, but I would like to say
 13 that I think it is critically important for all of
 14 us to undertake our responsibilities judiciously,
 15 solemnly, seriously and to the absolute best of our
 16 abilities. And that's the statement I'd like to make
 17 to solemnize the proceedings. Would that be
 18 consistent with the Board policy?**
 19 **A. I don't know why it would be inconsistent
 20 and I would say in my opinion he is entitled to his
 21 opinion, and if that's the way he wants to approach
 22 it that's fine.**
 23 Q. Okay, so that statement would not in your
 24 view violate this Board policy?

29 (Pages 110 to 113)

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1 A. In my opinion I don't see how it would, but
 2 however I'm not a legal mind, I don't know. To me
 3 it means when it's your turn then it's your turn.
 4 Q. And you can say whatever you want?
 5 A. You can say whatever you want, but, you
 6 know, there has to be some constraints, and that
 7 goes back to whether you cause disruption or if you
 8 want to threaten someone, you know, that type of
 9 thing. But I mean if somebody wanted to say you
 10 know it's my turn to open up this meeting and I want
 11 everybody here to realize that I don't believe in a
 12 higher power, and I'm not going pray for wisdom and
 13 guidance, that's fine. That's fine.

14 I mean, am I going to say you can no longer
 15 say anything in this opening of this meeting, I'm
 16 not going to say that. Personally, that's my
 17 opinion.

18 Q. Is there any reason why the only two means
 19 of solemnifying the proceedings mentioned in this
 20 policy are a prayer or a moment of silence?

21 A. I don't know the answer to that question.

22 Q. Is the policy -- I take it from your
 23 answers that your understanding of the policy is
 24 that it is not meant to exclude any method of

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1 Q. Well --
 2 A. To us or --
 3 Q. Well, it's structured at least as a press
 4 release, you see it says August 19, 2004 for
 5 immediate release?

6 A. Okay, I see that. I don't recall. I
 7 remember reading about this, but I can't remember
 8 when I saw it.

9 Q. So, this is dated August 19, 2004 and
 10 you'll see a little less than half down the page a
 11 sentence. Actually two sentence paragraph that
 12 says, "So one member of the Indian River School
 13 Board has asked the Rutherford Institute in Virginia
 14 for help in standing up to the ACLU. That was vice
 15 president Reginald Helms?"

16 A. Yes, I recognize that.

17 Q. Can we now establish that you spoke to the
 18 Rutherford Institute at some time before August 19,
 19 2004?

20 A. I would say that'd be safe to say, yes.

21 Q. Did you in fact ask the Rutherford
 22 Institute for help in standing up to the ACLU?

23 A. I don't know if I put it in those specific
 24 terms, but I said would you be willing to help us in

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1 solemnizing the proceedings as long as that method
 2 is respectful and courteous?
 3 A. That would be my opinion, yes.
 4 Q. Have you ever discussed that issue with
 5 anyone?
 6 A. No. Not -- well, let me say that not that
 7 I can recall.

8 MR. GOSSELIN: Excluding
 9 attorneys.

10 A. Yeah. Well, I'm not sure whether we had
 11 that discussion or not, I can't recall.

12 Q. Would you agree with me that a moment of
 13 silence is effective to secure the purpose of this
 14 policy which is to solemnify the proceedings?

15 A. I would agree that it could be a form of.
 16 I mean it's your choice. You want a moment of
 17 silence you know to take a moment to reflect,
 18 whatever then yeah.

19 Q. Is PX36 in front of you?

20 A. Yes, it is, this one?

21 Q. Did you review this document before it was
 22 released?

23 A. I don't recall. Before it was released,
 24 you mean in the newspaper or to us --

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1 our prayer case, I know I said that. I don't know
 2 if I said stand up to the ACLU or, but I did say we
 3 needed some help, would you be willing to help us.

4 Q. This document has a fax line reflecting
 5 that it was sent by the Neuberger firm on August 19,
 6 2004 at 9:31 in the morning --

7 A. Okay.

8 Q. -- the 655-9329 number I believe, I can't
 9 represent for sure, is a Neuberger firm fax number.

10 It's not in any case a number that's connected to
 11 you in any way, is it?

12 A. I don't think.

13 Q. Do you remember getting a copy of this
 14 press release by fax?

15 A. I remember getting a copy of this. I'm not
 16 sure if it was in the mail or by fax, but I remember
 17 getting a copy of this.

18 Q. My question to you is the last piece of
 19 information in the fax line is that it is page four
 20 of four?

21 A. Okay.

22 Q. Do you see that?

23 A. Yes.

24 Q. Do you know what the first three pages

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1 were?
 2 **A. No. I mean I don't recall. I may have**
 3 **known it at some time but I don't recall.**
 4 Q. Whenever you received a copy of this press
 5 release did you retain your copy?
 6 **A. I think so.**
 7 Q. So, if you received a copy of this press
 8 release it would still be in your Board files?
 9 **A. I can't say for sure, but maybe.**
 10 Q. Is it the case that you have tried to keep
 11 materials relating to this issue that you have
 12 received in connection with your School Board
 13 service?
 14 **A. I have tried to retain all the information**
 15 **that I received from Mr. Neuberger.**
 16 Q. How about from Messers Balliger and
 17 Cafferty?
 18 **A. I don't know if I kept that or not. I**
 19 **don't know if I turned that in or I have not made a**
 20 **specific -- I don't know whether I have or not.**
 21 Q. And did you keep the materials that you
 22 received on these issues from Mr. Griffin?
 23 **A. I don't know, I have to look. It's been a**
 24 **while ago I'm not sure whether I kept all that or**

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1 **A. They would probably have been in a Board**
 2 **packet, and I have some packets, but I can't say**
 3 **that they would specifically be in that packet, I'm**
 4 **not sure.**
 5 Q. And some of those packets have notes on
 6 them and some of them don't, is that correct?
 7 **A. That's true.**
 8 Q. Did you turn over all those packets to
 9 Mr. Gosselin or his associates?
 10 **A. I went through and tried to turn in all the**
 11 **notes. As I recall I tried to turn in all the notes**
 12 **that I had, but I can't recall what all that was. I**
 13 **just put that in a folder and give it to Mrs. Herd.**
 14 MR. ALLINGHAM: I am going to
 15 adjourn the deposition for the evening,
 16 largely in deference to David. We can go
 17 off the record.
 18 MS.DUPHILY: We are going off the
 19 record at approximately 6:30 p.m..
 20 (WHEREUPON the deposition was
 21 adjourned for the evening)
 22 MS. DUPHILY: Continuation of the
 23 videotape deposition of Mr. Reggie Helms,
 24 we are going back on the record on October

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1 **not.**
 2 Q. I'm going to close this up now, but let me
 3 just ask you a couple of final questions?
 4 **A. Sure.**
 5 Q. Do you -- to the extent that you have
 6 retained materials relating to this issue, is there
 7 a particular place in your house or office or garage
 8 or attic or where ever that you know that you have
 9 kept those materials?
 10 **A. Yes.**
 11 Q. Where would that be?
 12 **A. In my file cabinet.**
 13 Q. Is that at your house?
 14 **A. Yes.**
 15 Q. Do you have what amounts to a Board file?
 16 **A. It's a Neuberger file. Everything that I**
 17 **testified from Mr. Neuberger I put in this one file.**
 18 Q. And do you know whether you have similar
 19 files, a Griffin file and a --
 20 **A. No, I don't.**
 21 Q. Okay. If you had retained any materials
 22 from Griffin or Balliger and Cafferty or any other
 23 lawyer if you retained those would they be a Board
 24 file?

1 12, 2006 at approximate 9:06 a.m..
 2 Q. Good morning, Mr. Helms.
 3 **A. Good morning.**
 4 Q. We concluded last night at 6:30 or so.
 5 Between then and now have you had occasion to speak
 6 to anybody about your testimony yesterday?
 7 **A. Very brief with Jason on the phone last**
 8 **evening.**
 9 Q. And what did you say to him?
 10 MR. SHAW: I'm going to object to
 11 that question as attorney/client privilege.
 12 You can establish as to whether or not he
 13 spoke with Jason but not the context of
 14 that conversation.
 15 Q. My question was did you discuss your
 16 testimony with anyone. I'm not talking about a
 17 conversation with Mr. Gosselin about the weather or
 18 about scheduling the resumptions today or anything
 19 like that. My question was did you discuss the
 20 substance of your testimony with anyone? Did you
 21 have such a conversation with Mr. Gosselin?
 22 **A. Are you talking about specifics?**
 23 Q. Sure.
 24 **A. No, it was just in general.**

31 (Pages 118 to 121)

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1 Q. When you say that you discussed your
2 testimony in general, did you ask Mr. Gosselin or
3 did Mr. Gosselin ask you any questions about what
4 you said in response to my questions yesterday?

5 **A. No.**

6 Q. Did you discuss with Mr. Gosselin or did
7 Mr. Gosselin discuss with you questions that might
8 arise during the deposition today?

9 MR. SHAW: I'm going to continue to
10 object. You are asking him questions that
11 are privy to attorney/client privilege.

12 MR. ALLINGHAM: The Delaware rule
13 is that once a witness is on
14 cross-examination in a deposition the
15 lawyers are prohibited from speaking to the
16 witness on any matter of substance relating
17 to the testimony or the deposition. I can
18 call the judge if you want me to, but
19 that's the rule and when that rule is
20 breached -- it may not have been
21 breached, I don't know what the substance
22 of these conversations was, it may be that
23 they talked about the weather, but if that
24 rule is breached then I am entitled to know

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1 **that. I just pray like I normally do. Just to help**
2 **me to recall the things I need to recall, just, you**
3 **know, that sort of thing.**

4 Q. I wasn't meaning to trample on your
5 privacy, I was trying to get at not the substance of
6 the prayer but the way you did it, how you did it,
7 where you were, do you recall? Was it yesterday
8 morning, for example?

9 **A. Actually let me say this, the scriptures**
10 **that I read says that you should be in a constant**
11 **attitude of prayer. So, I pray many times a day, it**
12 **could be at work, driving down the road in my car,**
13 **coming here this morning. I mean there is -- it's**
14 **just not one time a day, although in the morning**
15 **when you know it would be the type of thing thank**
16 **you for another day and be with me and the family,**
17 **that sort of thing.**

18 Q. Thank you, that's helpful.

19 Am I right in thinking that based on what
20 you just told me that there are times during the day
21 when you offer a private prayer for divine guidance?

22 **A. Sure, yes.**

23 Q. For example, during the deposition
24 yesterday on a break, or when I was fumbling around

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1 precisely what was said.

2 So, I want to explore whether the
3 rule was breached. I haven't asked any
4 question about what question was
5 anticipated or what answer was suggested,
6 if in fact any answer was suggested. But
7 I'm entitled to probe whether the Delaware
8 rule was violated.

9 MR. SHAW: I'm entitled to raise
10 the attorney/client privilege in relation
11 to those conversations.

12 MR. ALLINGHAM: Could you mark the
13 transcript, please. And when we take a
14 break we will call the judge.

15 Q. Apart from Mr. Gosselin did you speak to
16 anyone else between 6:30 last night and this morning
17 about your testimony?

18 **A. No.**

19 Q. Mr. Helms, have you prayed for divine
20 guidance in connection with your testimony on this
21 deposition?

22 **A. Yes.**

23 Q. How did you do that?

24 **A. It might help me if you kind of explain**

1 for my papers or something, did you from time to
2 time ask for divine guidance?

3 **A. Not as I recall, no, I didn't.**

4 Q. Just before the deposition, correct?

5 **A. Right.**

6 Q. In whatever form that the prayer took was
7 it offered privately or publicly?

8 **A. I think you could say it was privately. I**
9 **don't think anyone was around.**

10 Q. As you understand it, Mr. Helms, you don't
11 feel that the effectiveness of a prayer for divine
12 guidance is undermined in any way by the fact that
13 it's offered privately, do you?

14 **A. I don't think prayer is undermined if**
15 **that's your word by anything, whether it's openly or**
16 **it's privately. I think as people pray in whatever**
17 **way they pray I don't think it's undermined by**
18 **anything except, I don't know if you want to hear**
19 **this or not, but I do as I read my scriptures it**
20 **says that I'm not sure that God hears the prayer of**
21 **a sinner.**

22 **There is a sinner's prayer that is referred**
23 **to, and so I would say to you I don't think anything**
24 **undermines that except that scriptures say God hears**

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1 **the prayers of his children and that sort of thing.**
 2 **So, but whether it's openly or whether it's**
 3 **privately I don't think that undermines it.**
 4 Q. Let me make sure that I understand what you
 5 just told me?
 6 A. Okay.
 7 Q. If the person offering the prayer is in a
 8 condition such that God will hear him, not a sinner?
 9 A. Okay.
 10 Q. Or sinner having been forgiven, if the
 11 prayer is in an appropriate state, it's your belief,
 12 Mr. Helms, that God would hear his prayers however
 13 and in whatever form the prayer is offered?
 14 A. I believe that to be true, whether it's
 15 openly or privately.
 16 Q. Silently or out loud?
 17 A. Yes.
 18 Q. Eloquently or haltingly?
 19 A. Exactly.
 20 Q. And one can use a traditional prayer that
 21 we all might know, or one can use one's own words?
 22 A. Exactly.
 23 Q. And it doesn't matter whether we're in
 24 church or in the supermarket when we offer our

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1 **Delaware, used to be Conectiv however they asked me**
 2 **to come back from time to time to help out on**
 3 **different jobs. So, I'm retired but I go back as a**
 4 **consultant from time to time.**
 5 Q. I think I asked you yesterday you attend
 6 church regularly?
 7 A. Yes.
 8 Q. For your spare time what do you do, what do
 9 you like to do?
 10 A. Well, in my spare time --
 11 Q. Assuming you have some?
 12 A. Which I don't have too much of, I enjoy, we
 13 travel a little. I used to play golf, I haven't
 14 played this year. I don't have a lot of hobbies
 15 cause I don't have that much spare time. That's
 16 about it.
 17 Q. And in all those roles and activities
 18 husband, father, consultant to Conectiv, golfer,
 19 traveler, whatever, all of those activities as one
 20 of the 250 or more million citizens of the United
 21 States, you don't need a Board policy to ensure that
 22 you're free to exercise your right to practice your
 23 faith as you see fit, do you?
 24 A. I didn't think I did.

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1 prayer?
 2 A. No, yes.
 3 Q. If we are in the right state, if we are in
 4 a state of grace where ever and however we seek
 5 God's help God will hear us?
 6 A. That is my belief.
 7 Q. But, would I be right in understanding that
 8 that's one of the principle messages of faith in
 9 your view?
 10 A. That God hears our prayer?
 11 Q. Yes.
 12 A. Yes.
 13 Q. And hears our prayers wherever and however
 14 we offer them?
 15 A. Yes.
 16 Q. You are married, Mr. Helms?
 17 A. Yes, I am.
 18 Q. And you have -- I recall we had a
 19 conversation, you have children but I don't remember
 20 how many?
 21 A. I have three, two boys and a girl.
 22 Q. And you work at a job or have a business to
 23 support your family?
 24 A. I'm retired from the power company in

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1 Q. You sought divine guidance for your efforts
 2 in all those roles as father and husband and so
 3 forth before October 19, 2004, and you sought divine
 4 guidance for your roles in the same way after
 5 October 19, 2004, isn't that correct?
 6 A. Yes.
 7 Q. And however you choose to practice your
 8 faith in those roles as a private citizen you are
 9 not acting as a governmental official when you pray
 10 at home or pray in church or pray in the
 11 supermarket, do you?
 12 A. No.
 13 Q. And no one observing you pray in those
 14 roles, in church, at home, in the supermarket,
 15 whatever on the golf course, would have any reason
 16 to think that you were praying as a government
 17 official, would they?
 18 A. I don't know. All I can say if I saw
 19 someone praying in the supermarket I wouldn't
 20 automatically assume that they are a government
 21 official. I mean I don't know how people -- all I
 22 can say is people in this area know me and know my
 23 life and know what I do.
 24 I don't know if they look at me I say

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1 whether well there is someone on the School Board
 2 over there praying how about that. I don't know
 3 what they are thinking. So, I don't know how to
 4 answer that other than to say that if I observed
 5 someone praying in a, on a golf course or whatever,
 6 I would not automatically assume that they were or
 7 were not a government official.

8 I don't know what the other people think.

9 Q. Now, when you walk out on the stage in your
 10 role as an elected School Board member, you are
 11 acting as a government official, isn't that right?

12 A. Yes.

13 Q. And the people in the audience understand
 14 that when you walk out there and take your seat you
 15 are performing your function as a government
 16 official?

17 A. I don't know that to be true because there
 18 is a lot of people that don't understand things of
 19 this nature. I mean, in other words, when you say
 20 do they understand, they know I'm on the School
 21 Board, but I don't know if they understand all of
 22 the legislative things, and the legalities of all
 23 those things. They do understand that I am on the
 24 local School Board and I am acting on behalf of the

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1 the meetings understand that you are praying for
 2 guidance in the performance of your role as a
 3 government official?

4 A. There again, I don't know how they see it.

5 I can only speak for myself. If I were in the
 6 meeting as part of an invited guest or whatever --

7 Q. Sure.

8 A. And someone on the School Board were to bow
 9 their head and pray, then I would say that's a
 10 School Board member praying. I don't know how the
 11 public, I can't speak for them, I don't know.

12 Q. Let me ask a little bit more generalized
 13 question?

14 A. Okay.

15 Q. It certainly would not be unreasonable to
 16 assume that members of the audience would understand
 17 that you were praying as a School Board member for
 18 divine guidance in the performance of your roles
 19 that night as a School Board member?

20 A. I think that would be a fair assumption,
 21 that they would, yeah.

22 Q. Now, this is a little bit different way of
 23 looking at something I asked you a few minutes ago,
 24 but it's not your view, is it, that the only way you

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1 local School Board, yes.

2 Q. And they know that when you walk out onto
 3 the stage at 7:30 and take your seat you are there
 4 because you are a School Board member?

5 A. That's correct.

6 Q. And it's your belief that the members of
 7 the audience understand that?

8 A. They understand that I'm a School Board
 9 member, yes.

10 Q. And the students understand that as well?

11 A. I would assume so.

12 Q. Now, I have either minutes or tapes of
 13 meetings on February 22, 2005, October 18, 2005,
 14 December 13, 2005, February 28, 2006, May 23, 2006
 15 and a few weeks ago on September 26, 2006 of Board
 16 meetings at which you have been invited to, and have
 17 accepted the invitation to open the meeting with a
 18 prayer. I'm not asking you to confirm the dates,
 19 I'm just -- those are the meetings that I have. We
 20 can show that, we don't have to fight about it?

21 A. Right.

22 Q. When you bow your head and pray for divine
 23 guidance at those School Board meetings, you
 24 understand that the public including the students at

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1 can seek divine guidance for your work as a Board
 2 member is by saying a prayer out loud on the stage
 3 in the name of Jesus Christ at the Board meeting?

4 A. No, that is not the only way.

5 Q. You could pray for divine guidance off
 6 stage in what I guess would be the wings of the
 7 stage right before you walk on?

8 A. Well, as I said before you can pray
 9 anywhere.

10 Q. Or after you walk on you could offer a
 11 silent prayer in your head for divine guidance?

12 A. Sure.

13 Q. You could invite those present with you to
 14 join you in a moment of silence as a way of seeking
 15 divine guidance, is that correct or not correct?

16 A. Yes, you could do that.

17 Q. And those methods of seeking divine
 18 guidance are no more or less effective in your
 19 understanding of one's relationship with God, no
 20 more or less effective than a public prayer out loud
 21 would be?

22 A. As I stated before I think God hears your
 23 prayers whether it's openly or privately. And the
 24 only thing I would say is that could you do it in

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1 the wings, yes, could you do it silently, yes, but
 2 as far as I know we're still allowed to do it
 3 openly, so if I were to choose to do it openly I
 4 hope I would continue to have the right to do so.
 5 But God would hear my prayer whether it was
 6 silent, whether it was openly, whether it was in my
 7 vehicle, or whether I was on stage. God would hear
 8 my prayer.
 9 Now, how effective the prayer is only He
 10 can determine that, but I believe He hears my prayer
 11 and answers according to His will, but I think
 12 that's why we are here. I'm certainly very hopeful
 13 that there doesn't come a time where someone says to
 14 me you cannot pray openly. I hope that never
 15 happens in this United States.
 16 Q. Everyone's memory is not perfect, but would
 17 you think it's fair to say that for every single
 18 Board meeting that you've attended as a Board member
 19 you have asked for God's help in performing your
 20 duties at that meeting?
 21 A. I would say almost every one, sure. I
 22 don't know if it would be -- like I told you
 23 yesterday I don't use words like never and all, but
 24 I would say that it's safe to say that yes for the

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1 So, there have been other meetings besides
 2 regular meetings that have been opened with prayer
 3 that I have been sitting in on --
 4 Q. Yes --
 5 A. -- but not every one.
 6 Q. Yes, sir. I was following up on your
 7 testimony and also that of Mr. Bireley and Dr.
 8 Hattier, that it is not the practice of the Board to
 9 open special meetings with a prayer, and that's
 10 correct, isn't it?
 11 A. That's correct, although over the years
 12 that I've been on there some have, but it would be
 13 out of the ordinary.
 14 Q. Yes, sir. And so setting aside the out of
 15 the ordinary special meetings where someone offered
 16 a public prayer, when you asked for divine guidance
 17 you did so privately?
 18 A. Yes.
 19 Q. Let me ask you this, before any special
 20 meeting have you ever gotten together with, just
 21 said to one or more of your fellow Board members,
 22 you know, before we start let's offer up a prayer
 23 for guidance? Not as a formal matter, but inside of
 24 purely private prayer have you invited someone to

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1 most part.
 2 Q. And that would include regular meetings and
 3 special meetings?
 4 A. Yes.
 5 Q. And so would you describe for me how you
 6 have, if you can recall, how you have asked for
 7 divine guidance before special meetings of the
 8 Board?
 9 A. Typically we receive an agenda, and on that
 10 agenda will be certain items, and I just simply ask
 11 the Lord to help me make good sound decisions that
 12 will be for the good of the district and the staff
 13 and the students, and ask his blessings on whatever
 14 decisions are made. That type of thing.
 15 Q. And that -- because we know that public
 16 prayers are not offered at special meetings, that
 17 would be a private prayer?
 18 A. That would be private, although I would say
 19 there have been other meetings besides regular
 20 meetings that prayer has been open, the meeting has
 21 been started with an open prayer. As a matter of
 22 fact, there were several negotiation meetings where
 23 I was asked by the association on the other side of
 24 the table if I would open the meeting with prayer.

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1 join you in a prayer?
 2 A. I don't recall any specific instances where
 3 I did, no.
 4 Q. We have, I don't know half a dozen examples
 5 of meetings at which executive sessions have
 6 occurred before the prayer to open the meeting has
 7 been offered. I don't know why that occurred, but
 8 the minutes show that there is an executive session
 9 and then the junior ROTC would offer the colors and
 10 the prayer would be offered.
 11 Am I correct that it would be your
 12 expectation that where a prayer was not offered
 13 publicly before you start the executive session, you
 14 would ask, you yourself, would ask for divine
 15 guidance for your decisions to be made in that
 16 executive session?
 17 A. I think it would be safe to say usually
 18 before any of the meetings take place that I would
 19 ask for God to help me, and to bless whatever, and
 20 that would be before any meeting, yes.
 21 Q. Okay, and so in those instances where an
 22 executive session starts before the public offering
 23 of a prayer, as with the special meetings, you would
 24 privately ask for God's help?

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1 **A. It would be private, yes.**
 2 Q. And as with my questions on the public
 3 meetings, your request, your prayer to God would be
 4 no less effective just because it was given
 5 privately and silently?
 6 **A. To the best of my knowledge, like I said,**
 7 **whether it's effective or not only God knows that.**
 8 Q. Fair enough. But as your understanding,
 9 your personal religious understanding, is that its
 10 effectiveness is not, is not affected -- its
 11 effectiveness is not affected by how it's offered?
 12 It may be affected by your state at the time it is
 13 offered, it may be affected by many things, but it's
 14 not affected by the way you offer the prayer?
 15 **A. If you are speaking the way as whether it's**
 16 **open or private, no I don't think that makes a**
 17 **difference.**
 18 Q. Who benefits from the Board Policy BDA.1,
 19 the School Board Prayer Policy?
 20 **A. Is that the prayer policy?**
 21 Q. Yes, sir.
 22 **A. Okay. Who benefits?**
 23 Q. Who is it intended to benefit?
 24 **A. Well, specifically I think it is intended**

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1 Q. That you will make decisions that are the
 2 best you can make with the assistance of God, if
 3 that's what the prayer is that's offered, correct?
 4 **A. That's my opinion, yes.**
 5 Q. And there was discussion at the Board
 6 level, wasn't there, that everybody benefits from
 7 good sound decisions that may be informed by God's
 8 help?
 9 **A. I don't recall specific discussions but**
 10 **that would have been my thoughts, yes. That would**
 11 **be my hope and my prayer would be that everyone**
 12 **would benefit.**
 13 Q. Don't recall that there was actually
 14 specific discussion that look everyone is going to
 15 benefit from this policy because everyone will
 16 benefit from the good decisions that will result
 17 from our asking for divine guidance?
 18 **A. That may have taken place, but to sit here**
 19 **and say I recall that specifically, no, I can't.**
 20 **Like I said, that would have been my opinion. Now,**
 21 **if I said that specifically I don't recall, but that**
 22 **would certainly have been my thoughts.**
 23 Q. This is something that sometimes lawyers
 24 try to do, you certainly don't recall, you don't

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1 **that the Board itself, when dealing with all the**
 2 **important issues would certainly benefit, but**
 3 **ultimately if we make good sound decisions and God**
 4 **blesses those decisions, then ultimately everyone**
 5 **should benefit from it, but the policy itself was**
 6 **written for the Board.**
 7 Q. And it was written to serve and protect the
 8 interests of the Board, is that correct?
 9 **A. To serve and protect? I don't know. When**
 10 **I voted to accept that policy I didn't have an**
 11 **attitude of serve and protect in particular I think**
 12 **it was more -- my opinion was that it was more to**
 13 **serve and the more that -- it's just a policy that**
 14 **we say a prayer before the Board meeting to ask**
 15 **God's blessing and to help us. So, to protect us I**
 16 **don't know, that was not my attitude that it was**
 17 **adopted to protect us.**
 18 Q. Let me just explore this a little bit?
 19 **A. Okay.**
 20 Q. The benefit to all of the constituents of
 21 the district that you see from Board prayer, is that
 22 your, you will make, we hope that you will make good
 23 decisions, correct?
 24 **A. Yes.**

1 affirmatively recall that such discussions did not
 2 take place. I mean, if I said to you Mr. Helms
 3 isn't it true that discussions of that sort took
 4 place, you wouldn't say no Mr. Allingham I recall
 5 they didn't happen?
 6 **A. No, I would not say that.**
 7 Q. In fact, you don't really doubt that they
 8 did happen, do you?
 9 **A. I wouldn't doubt it, although I just can't**
 10 **specifically recall it. But like I said that would**
 11 **have been my thoughts.**
 12 Q. And it's in that way that the
 13 constituencies of the district benefit from the
 14 policy, correct?
 15 **A. Is that we make good sound decisions and**
 16 **God blesses those, yes, that's my opinion.**
 17 Q. Now, I want to ask you a question, those
 18 interests, the interests of the constituency in good
 19 sound decisions informed by God's guidance, that
 20 benefit can be achieved if each of the Board members
 21 prays privately for divine guidance right before
 22 they walk on stage couldn't they?
 23 **A. I wouldn't think they'd be hampered, no, if**
 24 **they did it silently I don't think that that would**

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1 **be, you know, like we said a while ago, I think God**
 2 **hears prayer from his people, from his children,**
 3 **whether it's openly or silently.**
 4 **So, to say that if we did it silent he**
 5 **wouldn't hear, I can't say that, but I would just**
 6 **once again say that I hope we would also have the**
 7 **right, if you will, to do it openly if we so wished.**
 8 **But I can't say that it would hamper it because I**
 9 **don't know that.**
 10 Q. Well, and I want to try to draw a
 11 distinction in a minute between those two concepts,
 12 that is the interests of the constituents in the
 13 best decisions you can make, and the interests of
 14 the Board members in being free to practice their
 15 faith however they want to practice it, okay?
 16 A. Okay.
 17 Q. So, for the constituents, not only the ones
 18 out in the audience, but all around the district,
 19 the benefit from the policy is that they get, as you
 20 understand it, is that they benefit from the best
 21 decisions the Board can make and if those decisions
 22 are informed by divine guidance you think they will
 23 be as good as you can do, correct?
 24 A. Yes.

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1 **what the Board had been doing for years and years**
 2 **and years. Whether it was -- I did not accept that**
 3 **policy and vote for that policy to protect my right**
 4 **to practice religion, that wasn't my thoughts.**
 5 **My thoughts were that the policy was**
 6 **adopted because that's what we've been doing and we**
 7 **just simply put that in a policy where everybody**
 8 **could see it, what the Board had been doing, and**
 9 **what we wished to continue to do, not that that**
 10 **protects my rights. That document in my mind**
 11 **doesn't protect my rights of practicing religion in**
 12 **a School Board setting.**
 13 **I can practice my religion as far as I know**
 14 **unless they take it away, anywhere I want. That's**
 15 **something separate. This policy in my mind I was**
 16 **adopting just to let everybody know that this is**
 17 **what we've been doing and this is what we want to**
 18 **continue to do, and as far as I know that policy was**
 19 **according to -- in other words, it didn't violate**
 20 **the Constitution or anything else.**
 21 **But you when you asked me did I adopt that**
 22 **policy to protect my right of practicing religion,**
 23 **no that's not why I accepted that policy.**
 24 Q. Well, then let me just ask you the general

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1 Q. And I think we've agreed, but let me make
 2 sure, and we can agree that that benefit for the
 3 constituents of the best decisions possible can be
 4 achieved whether you ask for divine guidance in
 5 public on the stage or in private back stage?
 6 A. Yes.
 7 Q. Okay. Now, let me turn to the other issue
 8 that we identified. There is, in your view, a
 9 separate somewhat different benefit of the policy
 10 which is that it protects the Board members' rights,
 11 but I'm just going to speak in terms of you, Mr.
 12 Helms, okay?
 13 A. Okay.
 14 Q. It protects your right to pray privately if
 15 you want to in the wings or publicly on stage if you
 16 want to, isn't that right?
 17 A. That's the way I understand it.
 18 Q. And when you passed this policy, one of the
 19 reasons that you voted to adopt it was precisely for
 20 that reason, that it protected the Board members'
 21 rights, individual Board members' rights to practice
 22 their religion as they see fit?
 23 A. I wouldn't say it that way. I would say it
 24 by passing that policy that it put on paper a policy

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1 question, why did you accept the policy?
 2 A. Like I said, I accepted that policy and
 3 voted for it because I felt that's what we'd been
 4 doing for years and I wished to continue that, and
 5 by putting it down on a piece of paper and everybody
 6 saw what our policy was then I was hoping that that
 7 would allow us to continue to do it in the future.
 8 Q. Did you think that in the absence of the
 9 policy you wouldn't be permitted to do it in the
 10 future?
 11 A. I think in my mind I had a distinct
 12 impression that there was some people who were
 13 trying to take that away from us, and I wanted to do
 14 something that would let people know what we'd been
 15 doing and what we would like to continue to do. I
 16 had a feeling that at that time that someone was
 17 going to try to take that privilege away from me,
 18 and I didn't feel that was right.
 19 Q. And that's why you passed the policy?
 20 A. Among other things, but like I said, I
 21 think this policy is to benefit the Board and
 22 ultimately if we make the right decision and we
 23 receive God's blessing it's going to affect everyone.
 24 And just as clarification I think that all the

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1 accolades that Indian River School District has
2 received here lately, I think God is blessing this
3 district.
4 So, that's my thoughts on it.
5 Q. You mentioned in an earlier answer that
6 it's your belief that God answers the prayers of
7 God's children?
8 A. Yes.
9 Q. Can you tell me what you mean by God's
10 children?
11 A. Well, as I read the scriptures in the Bible
12 that I use, and I realize that everybody doesn't use
13 the same Bible, but however the scriptures that I
14 read it tells me that God's children, if you will,
15 we are all God's children, but when I talk about
16 prayer, hearing God's children, it's in relationship
17 to your relationship to God and I interpret that to
18 be that you have accepted God's plan for salvation.
19 But that's my opinion, that's the
20 scriptures that I read. And I know there is other
21 people who do not agree with that, and that's fine.
22 Q. Just to clarify, could you identify what
23 Bible it is that you use?
24 A. I read from NIV which -- when I say the

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1 A. Okay.
2 Q. That privilege that you're talking about is
3 the privilege to pray however you want, publicly or
4 privately, correct?
5 A. As I understand it, yes.
6 Q. And your perception in the summer of 2004
7 was that there were people who were trying to take
8 that right publicly to pray away from you?
9 A. Not in the beginning. When Mrs. Dobrich
10 first came to the Board my understanding was that
11 she had an objection, prayer before graduation and
12 that sort of thing. And that was in the summer of
13 2004.
14 As things progressed, and other parties
15 became involved, it was apparent to me that not only
16 did they want to take away prayer before graduation,
17 but they wanted to take my right to pray at a Board
18 meeting. So, it wasn't really in the summer it was
19 sort of like later on, because there was a
20 progression of things.
21 Q. By August 23, we looked yesterday at that
22 long special meeting, the four hour and 15 minute
23 special meeting, certainly by that point your fears
24 had crystalized and you perceived that someone was

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1 Bible that I use, I use the old testament and the
2 new testament. When I first became a Christian I
3 had a King James version. Now I read the NIV, but
4 it contains the old testament and the new testament.
5 And I also know that there are some people that
6 don't recognize the new testament, there is some
7 people that don't recognize the King James Bible at
8 all. So, there is many different beliefs, and
9 that's fine.
10 Q. It is your belief that God hears the
11 prayers of only those people who have accepted God's
12 plan for salvation?
13 A. That is my belief, yes.
14 Q. And that plan for salvation, an important
15 component of it is the acceptance of Jesus Christ as
16 our Redeemer and salvation?
17 A. That is my belief, yes.
18 Q. To go back to an earlier answer, you told
19 me that at the time that you were considering and
20 adopting the Policy BDA.1, the School Board Prayer
21 Policy, at that time it was your perception that
22 there were some people who were trying to take that
23 privilege away from me. I want to explore that a
24 little bit?

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1 trying to take away your right publicly to pray,
2 correct?
3 A. Yes, I think towards the end of October,
4 fist of September somewhere in there. I thought it
5 was becoming very obvious that now we've sort of
6 gone prayer before graduation as the issue that now
7 it was like all encumborsome, if you will, it's
8 prayer by anything, and even to the point where they
9 didn't want, these parties didn't want the Board to
10 pray before a meeting. I -- that was probably later
11 on in the discussion when that became apparent to
12 me.
13 Q. And before I move to another question, when
14 you say there were some people that were trying to
15 take that privilege away from me, who were those
16 people, was that me, was it -- who was it?
17 A. I see that as Mrs. Dobrich at that time I
18 believe -- well, I know at some point in time she
19 had contacted the ACLU, or ACLU had contacted her or
20 whatever, but the ACLU became involved and some
21 things started being said, and I had the -- in my
22 mind it was the ACLU coming on Board was now trying
23 to take away my privilege of praying before a Board
24 meeting, and whether that's what Mrs. Dobrich

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1 wanted, I don't know, but when the ACLU became
2 involved I think to me it became apparent that
3 everything was going to be taken away.
4 That's the way I felt. So, when I say the
5 parties I'm talking about Mrs. Dobrich and the ACLU.
6 Q. Okay, so when you say there were some
7 people that were trying to take that privilege away
8 from me, some people in your mind was Mrs. Dobrich
9 and the ACLU?

10 A. Yes.

11 Q. And in your previous answer you said when
12 the ACLU became involved it became clear that they
13 were trying to take everything away, what did you
14 mean by everything away?

15 A. Everything would be they didn't want us to
16 have prayer at athletic banquets, they didn't want
17 us to have prayer at School Board meetings. I can't
18 recall exactly what was said, but I believe in my
19 mind, and my memory is not as good as some other
20 people, but in my mind I was thinking that someone
21 even made the statement, and I don't know who it
22 was, I don't know if it was somebody from the ACLU
23 or whether was Mrs. Dobrich, but in my mind I felt
24 that someone was saying we want prayer out

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1 going to lose my right to express my prayer in
2 whatever way I wanted.
3 As a matter of fact, I even heard, and once
4 again I can't recall who said it, but someone even
5 said that as long as we prayed to God that was fine,
6 but they didn't want us to use Jesus' name.
7 Well, okay I just felt I was going to lose my right
8 to pray the way I felt I wanted to pray.
9 And so all those things came to light as I
10 recall it the start of fall or maybe the end of
11 summer, but it wasn't in the beginning. In the
12 beginning I thought it was just a prayer issue at
13 graduation.
14 Q. Did you understand that anyone was trying
15 to take away your right to pray publicly in any way
16 you saw fit at any place except at the School Board
17 meetings where you were functioning as a School
18 Board member?
19 A. As I recall the only discussions were about
20 the Indian River School District. They didn't say
21 they wanted to take away my right to pray in church,
22 no they didn't say that. The discussions were only
23 around the school district.
24 Q. I wasn't being, at least I wasn't trying to

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1 altogether. We don't want any public prayer
2 anywhere in the Indian River School District. That
3 was my thought.
4 So at that time I thought that I was going
5 to lose my right and my privilege to express prayer
6 at a Board meeting and I became concerned about
7 that. I didn't have to clarify after we had
8 received word from our attorneys --
9 MR. SHAW: Can I caution the
10 witness not to discuss what he
11 spoke about with his attorney.
12 A. Okay. It became apparent that our policy
13 in regards to graduation and the prayer was not in
14 accordance with what it should have been.
15 Q. Yes, sir.
16 A. At that point in time I said well let's
17 make it right, whatever the law says then that's
18 what I want to do. We are Board members we are
19 supposed to be law abiding citizens, if that's the
20 law then that's what we need to do.
21 However, as time went on it became apparent
22 that that was no longer the subject, the prime
23 concern now it was going into all aspects of prayer
24 throughout all the district and I thought I was

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1 be facetious. In the absence of the policy, if the
2 position as you understood it of Mrs. Dobrich and
3 the ACLU were accepted, you would remain free to
4 stand in church or kneel in church or stand on the
5 fairway at the golf course, or the aisle in the
6 supermarket and pray silently or out loud in the
7 name of a Deity or unnamed Deity or in the name of
8 Jesus Christ, correct? The only place that anyone
9 with suggesting that you, your right to pray as you
10 saw fit might be limited in some way was at the
11 School Board meeting, isn't that right?
12 A. That is my, yes, that is my impression.
13 Q. Okay. And it was that right that you
14 perceived that the ACLU and Mrs. Dobrich were trying
15 to take away?
16 A. That's correct.
17 Q. And it was to protect that right that you
18 voted to adopt Board Policy BDA.1?
19 A. Well, there again my thoughts was not to
20 protect me or whatever, I just wanted to be allowed
21 to continue what we'd been doing for many, many
22 years, and that policy I felt was a good policy to
23 ensure that.
24 I guess it's a matter of whether you say

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1 **protect or ensure. I mean I don't know what you're**
 2 **looking for, but in my mind when I adopted that**
 3 **policy it was to let people know what we'd been**
 4 **doing, what we would like to continue to do, and I**
 5 **felt that this policy would certainly do that.**

6 **But if you are asking me did I pass that**
 7 **policy to protect me, no, it was more like to ensure**
 8 **that I could continue to do what I had been doing.**

9 Q. And the benefits to the constituents of the
 10 Indian River School District that had flowed from
 11 your practice going back 30 years, the benefit of
 12 good decisions, that was going to continue whether
 13 you passed this policy or not, right?

14 Because we know that whether you passed
 15 this policy or not and no matter what the ACLU and
 16 Mrs. Dobrich want, you were still free and your
 17 fellow Board members were still free to seek divine
 18 guidance so that the constituents of the Indian
 19 River School District would receive the benefits of
 20 your best decision?

21 **A. I would hope that would be the case.**

22 Q. Nobody has ever suggested that you weren't
 23 allowed to seek divine guidance, have they?

24 **A. Nobody has told me that, no. The only**

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1 because that's a privileged communication. But I'm
 2 entitled to listen to what your understanding was,
 3 and so my question was not intended to ask you what
 4 your attorney said, my question was intended to
 5 elicit what your understanding is.

6 **A. Okay.**

7 Q. And you said before your understanding was
 8 that your previous practice on graduation, I'm just
 9 going to focus on graduation, your previous practice
 10 on graduation was not in accordance with the law?

11 **A. That's correct.**

12 Q. And so you fixed it?

13 **A. Yes.**

14 Q. And the way you fixed it would now prohibit
 15 Pastor Fike from offering the same prayer that he
 16 offered at the 2004 graduation publicly, correct?

17 **A. As I understand it, yes.**

18 Q. Do you feel that you as a Board somehow
 19 infringed by the passage of that policy on Pastor
 20 Fike's freedom to practice his faith as he wishes?

21 MR. SHAW: I'm going to object to
 22 that question. Because we are only
 23 supposed to be discovering School Board
 24 prayer issue here. I am going to allow the

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1 **thing they told me is that -- the only thing that I**
 2 **felt was coming is that they were going tell me how**
 3 **I could do that or maybe not so much how I could do**
 4 **it, but how I could not.**

5 **In other words, I felt I was being told you**
 6 **can seek divine guidance but you can't do it openly**
 7 **at a School Board meeting and I just felt -- I felt**
 8 **that was wrong.**

9 Q. Now, you have passed, the School Board has
 10 adopted some policies that you mentioned, for
 11 example, you had to address the graduation prayer
 12 issue?

13 **A. That's correct.**

14 Q. And that policy prohibits the School Board
 15 from inviting -- well, let me just take your answer,
 16 the previous practice was not constitutional,
 17 correct?

18 **A. As I understand it when we asked our**
 19 **attorney to investigate it he said that our policy**
 20 **did not --**

21 MR. SHAW: Objection.

22 Q. Just a second, sir. Both of us are going
 23 to -- it's important that I get your understanding.

24 You should not tell me what your attorney told you,

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1 witness to answer it.
 2 **A. Me personal opinion was that I don't**
 3 **personally agree with the policy.**

4 Q. That's helpful.

5 **A. However --**

6 Q. Yes, sir, go ahead.

7 **A. -- if the policy we had was**
 8 **unconstitutional, then as a law abiding citizen I**
 9 **want to do what the court says. Personally I do not**
 10 **agree with it.**

11 Q. That's helpful to me, but my question was
 12 -- had to do with the impact of the policy. In
 13 passing the policy did you as a Board member believe
 14 that you were somehow limiting Pastor Fike's First
 15 Amendment right to practice his religion as he sees
 16 fit?

17 **A. Personally I believe it infringed on his,**
 18 **mine, and whoever else would want to come to the**
 19 **podium or be invited to the podium to say a prayer.**
 20 **Like I said, I'm a law abiding citizen, if that's**
 21 **what the court says then that's what I will do, but**
 22 **personally I do not agree with it. As I understand**
 23 **it the policy -- well the policy says it should be**
 24 **student initiated and student led.**

40 (Pages 154 to 157)

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1 **In other words, any student can come to the
2 podium and pray. Then my personal question is
3 what's the difference between a student coming to
4 the podium and pray and I come to the podium and
5 pray? The only thing is I guess the courts have
6 addressed this and that's their ruling, and that's
7 what I will abide by, but personally I don't agree
8 with it.**

9 Q. Okay, but so -- and part of your answer is
10 helpful to me in understanding your view. Your view
11 is that the policy on prayer at graduation limits
12 your, Mr. Helms' First Amendment rights?

13 A. **Yes, I think it limits my right to pray
14 whatever way I want. I mean in other words, no
15 longer can a principal or anyone say Mr. Helms would
16 you like to come to the podium and lead us in
17 prayer, I can't do that, according to this -- at
18 graduation I can't do that.**

19 Q. And your understanding is that that's what
20 the law provides?

21 A. **As I understand it has to be student led
22 and student initiated that's my understanding. And
23 I certainly am not a student any longer.**

24 Q. So, am I correct that your understanding is

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1 **I wasn't going to change it unless someone told me,
2 but -- and if there is other policies in our manual
3 that are breaking the law and as we become aware of
4 it, then yes, I want to be in compliance. Would I
5 never change a policy unless somebody told me it was
6 breaking the law, no.**

7 Q. Okay, you are right, my question was what
8 we say over broad.

9 A. **Okay.**

10 Q. In this area of prayer and the exercise of
11 religion, am I right in thinking that you would not
12 agree to change a practice or policy of the district
13 without being told definitively that it was against
14 the law?

15 A. **In this specific case I did not want to
16 stop doing what we had been doing for years simply
17 because someone said it wasn't, you can't do it. I
18 said I need someone higher up, if you will. In
19 other words, my statement was I want to take it to
20 court and let the court tell me that it's wrong.
21 And like I said even though I don't agree with the
22 graduation policy if that's the laws of our land
23 then even as I took oath as being a part of the
24 member of the Board I must abide by law and that's**

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1 that our laws do contemplate certain limitations on
2 one's individual right to exercise his religion and
3 faith as he sees fit. An example is the law that
4 prevents you, for example, from standing up at the
5 podium at graduation and offering a prayer?

6 A. **I think some of the decisions here again
7 it's my opinion, that some of the decisions,
8 although well intended, sometimes limits people's
9 rights, yes.**

10 Q. Now, you told me yesterday that you don't
11 approve of policies that change your historical
12 practices, or that limit people's rights unless you
13 are satisfied with, definitively satisfied, that the
14 law requires you to do that, correct?

15 A. **That's a little confusing, would you
16 rephrase that?**

17 Q. I will start again. It's your view that
18 you are not going to change a practice of the
19 district that goes back in time, a historical
20 practice of the district, you are not going to vote
21 to change it unless somebody tells you definitively
22 that it's against the law, correct?

23 A. **No. I wouldn't say I'm not going to change
24 it, I'm saying in this issue about the prayer, that**

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1 **what I want to do.**

2 **However, in this case nobody had definitely
3 told me that what we were doing was
4 unconstitutional, so I needed someone to tell me
5 that before I change what we had been doing for
6 years.**

7 Q. So, on the graduation prayer issue you were
8 satisfied, on the Board prayer issue you have not
9 been satisfied?

10 A. **No, not as of yet.**

11 Q. Okay. And one reason to pass the policy
12 was so that you could get a judicial decision, get a
13 judge to say one way or another with finality is our
14 practice constitutional or not, isn't that correct?

15 A. **No. Like I said before, my reasoning for
16 adopting and voting for that policy was to let
17 people know -- there was a lot of people in our
18 district who did not attend Board meetings and had
19 no idea what this Board had been doing for years.
20 So, one aspect was this was going to let people know
21 what this Board has been doing for years, what is
22 our history and past practice, and the other reason
23 was that I wanted to continue to do that. That was
24 the reason for me adopting that policy.**

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1 Q. You could have let people know what you
2 were doing by sending a letter, couldn't you?
3 **A. Well, you could, but then being on this**
4 **Board for a number of years, letters don't always**
5 **make it home. You know, people are missed even by**
6 **trying to send them letters or sending it home with**
7 **little Jamie or little Johnny there are still those**
8 **people who are missed.**
9 Q. And you think that you are going to get a
10 broader reach by passing a policy than you are going
11 to get by sending a letter home?
12 **A. I think this makes it available to anyone**
13 **and everyone. If somebody were to call the district**
14 **office today and said what's going on with the Board**
15 **they could say to them they have a policy and this**
16 **is our policy, and all they have to say is I want a**
17 **copy of that, absolutely. But my sending a --**
18 **folding that policy up and sending it to all of our**
19 **constituents, you could do that, but I just never**
20 **thought about doing it.**
21 Q. This is a little bit of a diversion, but
22 are you aware that a resident of the district asked
23 for a copy of the School Board Prayer Policy and was
24 told by district employees to file FOIA request?

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1 the court reporter to mark as PX42 a
2 document that has no Bates, but it's titled
3 School Board Member Ethics.
4 (WHEREUPON Plaintiff's Exhibit 42
5 was marked for identification.)
6 Q. Do you recognize what we have marked as
7 PX42, Mr. Helms?
8 **A. Yes, I do.**
9 Q. Have you read it?
10 **A. I have read it. Like I said yesterday, I**
11 **couldn't answer to it without reading it, but I have**
12 **read it before, yes. Or do you mean now?**
13 Q. No, I meant at some time in the past?
14 **A. Okay, yes, I have.**
15 Q. And you understand that the first
16 introductory paragraph says, when it says "Members
17 of the Board of Education will strive to attain the
18 following Code of Ethics." This is a code of ethics
19 that you have undertaken to strive to attain?
20 **A. Yes.**
21 Q. In paragraph one, the third, or section
22 one, the third paragraph one of the admonitions of
23 the Code of Ethics is, "That the public expects my
24 first and greatest concern to be in the best

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1 **A. My first question would be what's a FOIA**
2 **request?**
3 Q. Freedom of Information Act.
4 **A. No, I was not aware of that.**
5 Q. If that were true, that would be
6 inconsistent with your understanding of this notion
7 of free access of the policies, correct?
8 **A. I'm not familiar with all the nuts and**
9 **bolts of how it's done, but what I'm saying is I**
10 **would hope if someone were to call the district**
11 **office and say that I would like to see a copy of**
12 **that policy that they could get it. Whatever means,**
13 **if it means they have to file whatever --**
14 MR. ALLINGHAM: Let me interrupt
15 you Mr. Helms we are going to run out of
16 tape, I'm really sorry.
17 **A. Okay, sure.**
18 MS. DUPHILY: We are going off the
19 record at approximately 10:04 a.m..
20 (WHEREUPON a brief recess was
21 taken)
22 MS. DUPHILY: We are back on the
23 record at 10:13 a.m..
24 MR. ALLINGHAM: I am going to ask

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1 interest of each and every one of these young people
2 without distinction as to who they are or what their
3 backgrounds may be." And have you at all times made
4 your first and greatest concern to be the interest
5 of the young people, the students whose education
6 you have been entrusted with?
7 **A. I strive to do that, yes.**
8 Q. And on the second page, in the third
9 paragraph, there is an admonition that each Board
10 member should resist every temptation and outside
11 pressure to use my position as a School Board member
12 to benefit either myself or any other individual or
13 agency apart from the total interest of the School
14 District, do you see that?
15 **A. Yes, I do.**
16 Q. Have you at all times, do you understand
17 that to be your obligation?
18 **A. Yes.**
19 Q. And have you at all times strived to
20 satisfy that obligation?
21 **A. I strive to do so, yes.**
22 Q. Just to pick up on an answer that you gave
23 me before the break, I understood you to say, but
24 tell me if I am wrong, that one reason that you

42 (Pages 162 to 165)

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1 passed the policy was so that the public would know
 2 that the Board intended to pray at its meetings, was
 3 that one of the purposes?
 4 **A. I think the way I phrased it was that the**
5 public know what we've been doing, what the Board
6 had been doing, and that by adopting this policy I
7 was hoping that we could continue to do that.
 8 Q. Fair enough. So, it was both forward
 9 looking and backward looking? You wanted to tell
 10 them what you have done and you wanted to tell the
 11 public that you were going to continue to do that?
 12 **A. And to clarify that, there was some**
13 discussions that we had been doing this for years
14 but there was nothing in writing about what we had
15 been doing, so one of the purposes or one of the
16 things in my mind that I wanted to do was, number
17 one, let's get it down on a document that let's
18 people know what we've been doing and hopefully by
19 doing that we could continue to do that in the
20 future.
 21 **So, I think that's -- I don't know if that**
22 clarifies it or not, but that was my thinking.
 23 Q. Now, PX34 that we looked at yesterday
 24 toward the end of the day. In terms of having

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1 Q. Do you know who drafted it?
 2 **A. Yes.**
 3 Q. Was it Mr. Neuberger or Mr. Whitehead?
 4 **A. I don't know that. I know it came from the**
5 Rutherford Institute, or it may have come by way of
6 Mr. Neuberger. I'm not sure which one.
 7 Q. So, would it be fair you know who you got
 8 it from, you don't know who drafted it?
 9 **A. Right. I know where it came from, yes.**
 10 Q. You told me that in adopting the policy you
 11 wanted to set down in writing what the Board had
 12 been doing in the past?
 13 **A. Exactly.**
 14 Q. Look at PX9, which is the actual policy,
 15 BDA.1. I'll give you a copy. Here is a copy.
 16 Would you point to me where in that policy
 17 it is set down in writing what the Board had done in
 18 the past?
 19 **A. I think the document as a whole reflects**
 20 **what the Board had been doing in the past. In other**
 21 **words, if you're asking me is there a numbered item**
 22 **in there that says in the past the Board has been**
 23 **doing thus and so, no, there isn't anything in**
 24 **there. The policy as a whole is what we had been**

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1 nothing in writing on what you had been doing, was
 2 the preamble, the material before the numbered
 3 paragraphs that ultimately became the policy near
 4 the end of this document, was the preamble intended
 5 to be a description of what the Board had been doing
 6 in the past?
 7 **A. The preamble, you are talking I assume page**
8 one?
 9 Q. Yeah, everything --
 10 **A. All the whereases?**
 11 Q. Whereas the school Board is an elected
 12 body, whereas the school Board has a long
 13 established custom, that was intended to set down in
 14 writing what the Board had been doing?
 15 **A. I'm not sure. And one of the reasons is**
16 that I was not involved with preparing this
17 document. I don't know why, I don't know the
18 specific reason why the whereases are in there.
 19 Q. Okay.
 20 **A. If you follow what I'm saying is, this was**
21 drafted by someone else.
 22 Q. Yes, sir, I understand.
 23 **A. And I don't know what their intent was when**
 24 **they did that.**

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1 **doing.**
 2 Q. Looking at PX34 you see that there are
 3 paragraphs that say essentially exactly what you
 4 just said?
 5 **A. You mean, yes.**
 6 Q. For example --
 7 **A. Do you have something specific?**
 8 Q. Yeah, for example the second whereas clause
 9 says, "This School Board has had a long established
 10 custom of solemnifying its proceedings by opening
 11 its meetings with a sectarian or non-sectarian
 12 prayer by one individual Board member as his or her
 13 conscience and religious tradition leads?"
 14 **A. Yes, I see that.**
 15 Q. Nothing like that was incorporated in the
 16 policy as adopted?
 17 **A. No.**
 18 Q. Now, you said that your understanding was
 19 that policy BDA.1 reflected what the Board had been
 20 doing in the past, correct?
 21 **A. That's correct.**
 22 Q. Had the Board prior to the adoption of
 23 BDA.1 read a disclaimer before the prayer at its
 24 open meetings?

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1	A. About prayer?	Page 170	Page 172
2	Q. Yeah.		
3	A. Not to my knowledge.		
4	Q. So, that portion of the policy that has the		
5	disclaimer language in it is not what the Board had		
6	been doing in the past, as it says in paragraph		
7	four?		
8	A. I'd have to see it, but to the best of my		
9	knowledge the disclaimer that is read at the		
10	beginning of the Board, regular Board meeting is		
11	different than this. That's what I think. I mean		
12	I'd have to see it, but I think. There may be some		
13	words in the disclaimer that may also be in this		
14	policy, but I think it's different. Do you have a		
15	copy of that?		
16	Q. No. We asked for it and weren't given it		
17	yet.		
18	A. Okay. I'm just trying to go from memory		
19	but I think it's different.		
20	Q. Mr. Bireley testified that what he reads is		
21	paragraph one and paragraph four of the policy?		
22	A. And that may be true. I was just looking		
23	at paragraph one and I'm thinking it's different		
24	than that.		
1	Q. In any events, your memory is that no	Page 171	Page 173
2	disclaimer was read immediately preceding the prayer		
3	before this policy was adopted?		
4	A. To the best of my recollection, no. And		
5	I'll clarify that by saying we didn't think we had		
6	to, but no I don't recall.		
7	Q. Well, that's, I mean that's a helpful		
8	point. Do you feel now that you have to in order to		
9	comply with the law?		
10	A. Am I allowed to say that we have been		
11	advised --		
12	Q. I only want to know what your understanding		
13	is. Is it your understanding that you must read the		
14	disclaimer language in order to comply with the law?		
15	A. My understanding is that that is something		
16	that we should do. Nobody has said to me you have		
17	to do that to be in compliance with the law, but I		
18	have heard that that is something that we should do,		
19	so we started doing it.		
20	Q. Okay. Your understanding is that it's not		
21	necessarily required by the law but it's a good		
22	thing to do?		
23	A. It was a good thing to do.		
24	Q. It would serve the interests that are		

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1 is to confirm that the transcript is an accurate
 2 transcription of what you said, okay?
 3 **A. Okay.**
 4 **(AT THIS POINT AN AUDIO RECORDING WAS PLAYED)**
 5 Q. There is a portion of the transcript that
 6 says, rest "Of sentence drowned out by applause,"
 7 and then it picks up, "As a citizen." With the
 8 exception of that portion of your statement which
 9 our folks just couldn't pick up over the applause,
 10 is the transcript marked PX43 accurately reflect
 11 what you said?
 12 MR. SHAW: Before he answers could
 13 we qualify it further? I don't think they
 14 played the portion from above loud and
 15 prolonged applause and cheers.
 16 MR. ALLINGHAM: Fine.
 17 MR. SHAW: Can you just kind of
 18 confirm that at this point?
 19 MR. ALLINGHAM: I am only asking
 20 you to confirm the words reflected next to
 21 Helms colon.
 22 **A. Yes.**
 23 Q. Okay. Were you reading from a prepared
 24 statement?

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1 on what else you may have talked about
 2 with Mr. Neuberger or any of your counsel
 3 at the time.
 4 **A. I shared with Mr. Neuberger my concerns and**
 5 **this is what he sent to me.**
 6 Q. All right, so the answer to my question is
 7 no you did not ask Mr. Neuberger to prepare a
 8 statement for you?
 9 **A. As I recall, no.**
 10 Q. Is it then correct that Mr. Neuberger
 11 prepared this statement on his own initiative and
 12 sent it to you?
 13 **A. I think that'd be safe to say, yes.**
 14 Q. Did you read the statement prepared by
 15 Mr. Neuberger verbatim or did you edit it?
 16 **A. I'm not sure. I can't remember. I can't**
 17 **remember what I received and I'm not sure whether I**
 18 **might have ad-libbed or not. Without seeing the**
 19 **piece of paper -- I don't know whether I put some of**
 20 **my own words in there or not.**
 21 Q. Did you give any consideration at all to
 22 providing information to the people assembled in the
 23 auditorium about the author of the words that you
 24 were reading?

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1 **A. Yes.**
 2 Q. And who prepared the statement?
 3 **A. Mr. Neuberger.**
 4 Q. When did you first see the statement?
 5 **A. I don't know, I don't recall when I first**
 6 **saw it. It was before the Board meeting but I don't**
 7 **recall how much before.**
 8 Q. Did you give any thought to saying before
 9 you began reading your statement, I would like to
 10 read a statement from, prepared for me by Thomas
 11 Neuberger of the Rutherford Institute?
 12 **A. No.**
 13 Q. Did you think that people in the audience
 14 would understand that these were your words?
 15 **A. I never give it any thought.**
 16 Q. You don't care whether people think they
 17 are your words?
 18 **A. That was not my prime concern at that time,**
 19 **no.**
 20 Q. Did you ask Mr. Neuberger to prepare a
 21 statement for you to read?
 22 **A. I don't recall asking him.**
 23 MR. SHAW: Just answer the
 24 question as simply as you can to not tread

1 **A. No.**
 2 Q. Am I correct then that you, it was your
 3 view that it didn't matter who had written the words
 4 that you were reading?
 5 **A. That it didn't matter?**
 6 Q. Yes.
 7 **A. Well, I would hope that I just wouldn't**
 8 **read something that just anyone wrote. Did it**
 9 **matter, yes -- I don't understand what you're -- it**
 10 **doesn't matter, sure it matters.**
 11 Q. Well --
 12 **A. What are you asking me?**
 13 Q. Do you think it would matter to a member of
 14 the audience whether those words were Reggie Helms'
 15 words, as opposed to Osama bin Laden's words? I'm
 16 trying to think --
 17 MR. SHAW: Objection, foundation.
 18 MR. ALLINGHAM: There is no
 19 foundation problem. I'm asking him what he
 20 thinks.
 21 MR. SHAW: You are asking what the
 22 audience thought.
 23 MR. ALLINGHAM: No, I am asking
 24 him what he thinks the audience thought,

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1 that's an entirely different question.
 2 MR. SHAW: That's fine.
 3 **A. I would say I don't know what they thought.**
 4 **When I read this at the Board meeting that was not**
 5 **on my mind whether they thought it was my words or**
 6 **someone else's words.**
 7 Q. Don't you think you ought to make public
 8 statements in your own words?
 9 **A. I think you can do it in your own words or**
 10 **perhaps you share your thoughts and someone else can**
 11 **write a speech for you. I mean President Bush does**
 12 **it all the time. Does it have to be in my own**
 13 **words, no it can be my thoughts and then as I review**
 14 **it, if there is anything in there that I do not**
 15 **agree with then maybe discuss about taking it out,**
 16 **this sort of thing.**
 17 **But public figures do it all time, people**
 18 **write speeches for people all the time. So, do I**
 19 **think it has to be in my own words, no not always.**
 20 **I mean someone could prepare something for you. If**
 21 **they are your thoughts and your concerns, maybe they**
 22 **have a better way of expressing it. I mean,**
 23 **everybody's vocabulary and the way of expressing**
 24 **themselves is not the same. Does it have to be in**

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1 **anybody out there like that or not. Could have**
 2 **been, it's very possible.**
 3 Q. What did you do with the written statement
 4 that you had before you that you read from?
 5 **A. I don't know. I don't know if I still have**
 6 **it or not, I don't know. I don't think I do. When**
 7 **asked if we had anything, notes or whatever I don't**
 8 **know if that was part of the notes or not. I don't**
 9 **know what I did with it.**

10 MR. ALLINGHAM: I'd ask the
 11 reporter to mark as PX44 a document bearing
 12 Bates number P2640, a copy of an article
 13 from the Sussex Post dated Thursday July 6,
 14 2006.

15 (WHEREUPON Plaintiff's Exhibit 44
 16 was marked for identification.).

17 Q. If you look at the -- it's actually a copy
 18 from two different pages as you will see, the front
 19 page and then page seven, and I'm looking at the
 20 page seven portion, it says continued from page one
 21 down at the bottom?

22 **A. Yes.**

23 Q. And the second paragraph there is a block
 24 quote, "The ACLU has an ongoing nationwide campaign

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1 **my own words, no.**
 2 Q. Everybody understands that President Bush's
 3 speeches are written by speech writers, don't they?
 4 **A. I think they do. Not all of them, but a**
 5 **lot of them, sure.**
 6 Q. Most people?
 7 **A. Sure.**
 8 Q. Everybody in this room understands that
 9 President Bush's speeches are written by speech
 10 writer?
 11 **A. Okay.**
 12 Q. Did you think everybody in the auditorium
 13 understood that somebody else had written the words
 14 that you were saying into the microphone?
 15 **A. I don't know. I can only speak on behalf**
 16 **of me, in my opinion. I have heard some people say**
 17 **some things in meetings before and I thought to**
 18 **myself somebody must've wrote that for them because**
 19 **they don't speak that way normally. That's just my**
 20 **opinion.**
 21 **If there was someone sitting in the**
 22 **audience saying, you know, that sounds good but**
 23 **Reggie don't normally talk that way, somebody must**
 24 **have wrote that for him. I don't know if there was**

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1 to take away the right of any citizen legislator to
 2 speak and pray according to his conscience and
 3 religious tradition, Board member Reggie Helms said
 4 following that vote. My freedom of speech is too
 5 important to compromise or risk its loss.

6 Our court case, where we have been standing
 7 up to the ACLU provides the opportunity for the
 8 federal court to permanently uphold my right not to
 9 be treated as a second-class citizen or to have to
 10 move to the back of the bus. And it continues,
 11 "Accordingly, I have voted not to settle the pending
 12 court case so the courts will have the opportunity
 13 to finally decide whether I can be discriminated
 14 against because of the viewpoint of my speech, or
 15 because I come from a particular religious tradition
 16 which the ACLU opposes."

17 Now, my first question is, if you look at
 18 the transcript which we have marked as PX42, sorry,
 19 PX43, can we confirm that up until the point where
 20 my colleague was unable to read or hear the sentence
 21 drowned out by applause, that the words are
 22 essentially identical from the Sussex Post, and the
 23 transcript?

24 **A. They are almost identical.**

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1 Q. And my next question is, at the point
2 where the Sussex Post reproduces what we were unable
3 to get from the tape, does it accurately reflect
4 what you recall of what you said?
5 **A. Without the piece of paper in front of me I**
6 **don't recall what was on that document.**
7 Q. Or what you said?
8 **A. Or what I said.**
9 Q. Okay. Let me ask you a more general
10 question, is what is reported here in the rest of
11 the sentence drowned out by applause section of my
12 transcript, is that consistent with what you felt at
13 the Board meeting?
14 **A. Yes.**
15 Q. Have you given copies of your prepared
16 statement to any reporters at any time?
17 **A. When I read this I was trying to recall**
18 **whether someone came up to me after the meeting and**
19 **asked me for a copy of that, and that may have**
20 **happened, but I don't recall.**
21 Q. Do you know Mr. Diehl of the Sussex Post?
22 **A. I believe I do.**
23 Q. But you just can't recall whether you gave
24 him a copy of your statement?

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1 understanding about the ACLU's role in this case?
2 **A. My opinion is that the ACLU is a**
3 **organization --**
4 Q. Before you describe the ACLU, could you
5 tell me what the ACLU's role is in this case, as you
6 understand it?
7 **A. The understanding that I have in this case,**
8 **the ACLU is taking the standpoint that in my view**
9 **that they're trying to limit my right to pray where**
10 **ever, whenever, and however I wish. And I have a**
11 **very limited background on the ACLU, but I will say**
12 **what I have read, that I am not in agreement with**
13 **what the ACLU is in my opinion trying to do.**
14 **And that is that as a Christian I feel as**
15 **though the ACLU is trying to take some of my rights**
16 **away, although however well intended, they say they**
17 **are an organization that wants to protect and**
18 **preserve people's rights, I'm sorry that's not my**
19 **opinion, because as a Christian I think that this**
20 **organization in a lot of ways tries to take some of**
21 **my rights and privileges away.**
22 Q. I am not making my question clear.
23 **A. Okay.**
24 Q. Is the ACLU a plaintiff in this case?

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1 **A. Like I said, you know, I do recall people**
2 **coming up to me after the meeting, several people,**
3 **and there may have been reporters, and I don't know**
4 **if they asked me for a copy of that or not. I don't**
5 **recall giving that to someone, but I could have, but**
6 **I don't recall it.**
7 MR. ALLINGHAM: We will send you a
8 letter to confirm this, but we call for
9 production of the prepared statement and
10 any drafts or notes on that prepared
11 statement.
12 Q. The statement that we have marked and which
13 you heard was your view on February 27, 2006,
14 correct?
15 **A. Yes.**
16 Q. And do you continue to hold the views that
17 are reflected in the statement?
18 **A. Yes.**
19 Q. Is it your view that in this court case
20 that you have been standing up to the ACLU?
21 **A. In my personal opinion?**
22 Q. Yes.
23 **A. Yes.**
24 Q. What is that based on? What is your

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1 **A. Not to my knowledge.**
2 Q. Mrs. Dobrich or the Doe family represented
3 by the ACLU in this case?
4 **A. That's my opinion.**
5 Q. And what's that opinion based on?
6 **A. Right now?**
7 Q. Yup.
8 **A. What I've been told.**
9 Q. By whom?
10 **A. Attorneys, friends.**
11 Q. Do you have any direct information that
12 Mr. Horvath, Mr. Lenhard or I are representing or
13 are affiliated with the ACLU?
14 **A. Do I have anything?**
15 Q. Yes, sir.
16 **A. No.**
17 Q. Has anybody told you that we are?
18 **A. I'm trying to recall if anybody actually**
19 **told me that, or whether that was my assumption.**
20 **I don't think, I don't recall anybody**
21 **telling me specifically that you are members of the**
22 **ACLU. I think, I recall somebody mentioning that**
23 **you may be, how can I say this, I don't know what**
24 **the term is, but you may be employed by the ACLU to**

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1 take this case.
 2 In other words, I have heard for instance
 3 that certain attorneys make themselves available to
 4 certain organizations, and I have heard that you had
 5 made yourself available for the ACLU. Do I have any
 6 documentation, no, but I heard that.
 7 Q. Who did you hear that from?
 8 A. Attorneys.
 9 Q. Neuberger?
 10 A. Yes.
 11 Q. Did he give you a list of the cases --
 12 MR. SHAW: I'm going to object --
 13 Q. -- in which I have been affiliated with the
 14 ACLU?
 15 MR. SHAW: Mr. Neuberger
 16 represented Mr. Helms at the time and this
 17 is privy attorney/client privilege.
 18 MR. ALLINGHAM: Fine, I will
 19 withdraw the question.
 20 Q. Mr. Helms, you made a pretty big point of
 21 standing up to the ACLU at the February 27 Board
 22 meeting, in a number of articles that I can provide
 23 to you if you want, you have routinely characterized
 24 your passionate defense in this case as standing up

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1 A. Really.
 2 Q. You didn't see, for example, signs that
 3 said, Anti Christian Lawyers Union ACLU?
 4 A. If I did see it I don't recall it, it don't
 5 stick out in my mind, no.
 6 Q. That's fine?
 7 A. What was it?
 8 Q. Anti Christian Lawyers Union?
 9 A. No.
 10 Q. That's not what ACLU stands for, is it?
 11 A. I'm pretty sure it doesn't. But no, I
 12 don't recall seeing a sign like that, and it may
 13 have been there, but I don't recall.
 14 Q. Before you made repeated statements about
 15 the ACLU's control of and representation of the
 16 Plaintiffs in this case, did you make any effort to
 17 actually check whether the ACLU was driving this
 18 suit, representing the Plaintiffs or whether the
 19 Plaintiffs were represented by lawyers who were
 20 connected to the ACLU?
 21 A. If you are asking me did I call you or
 22 anyone else to verify that, no, I did not.
 23 Q. Did look at the Complaint to see whether or
 24 not the ACLU was on the Complaint?

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1 to the ACLU, which wants to take your rights away,
 2 is that a fair statement?
 3 A. That is my opinion, yes.
 4 Q. Did you think it was import -- and you
 5 understood that that would inflame people's views
 6 about this case, didn't you? People have extreme
 7 views about the ACLU, don't they?
 8 A. I don't know.
 9 Q. Oh, Mr. Helms, come on?
 10 A. No, I would assume that would be the case,
 11 but I don't know that. I haven't had anyone come up
 12 to me, and I don't know what your word was, but what
 13 would be my word, really upset with the ACLU to the
 14 point where they say Mr. Helms we're so upset, I've
 15 not had anybody do that.
 16 Q. Let me ask you this question, when you
 17 walked into the auditorium on February 27 did you
 18 notice that there were a lot of signs being held by
 19 people in the auditorium?
 20 A. I noticed there were signs, yes.
 21 Q. Did you notice that many of them were
 22 attacks on the ACLU?
 23 A. No.
 24 Q. Really?

1 A. No.
 2 Q. Did it matter to you whether what you said
 3 was true about the ACLU?
 4 MR. SHAW: I'm going to object.
 5 You're harassing the witness.
 6 MR. ALLINGHAM: No, I'm not, no
 7 I'm not, be quiet. You can just object.
 8 MR. SHAW: Pardon me, sir. You can
 9 ask --
 10 Q. Did it matter to you whether it was true
 11 that what -- I will strike that. Did it matter to
 12 you whether what you said about the ACLU was true?
 13 A. I believe it to be true. One of the things
 14 that the reason why I believe it to be true, was you
 15 have to forgive me, I have trouble with names, is
 16 that Mrs. Fennel, Fennell, something like that, was
 17 at one of our meetings, am I getting the name right?
 18 Anyhow, I understood her to be a lawyer who made
 19 helpers available to the ACLU, and we were told
 20 that. And --
 21 Q. Oh, Mrs. Fennel told you that, didn't she?
 22 A. No, no -- well --
 23 Q. Did she say at the August 24th meeting I am
 24 here representing the ACLU?

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1 A. She may have said that. I don't recall it,
2 but I do know we had discussions that she was there
3 on behalf, as a lawyer who had been made available
4 to the ACLU. She may have made that statement, I
5 don't recall it.

6 Q. And have you gotten any information of any
7 kind that Ms. Fennell represents the Plaintiffs in
8 this case?

9 A. Not to my knowledge.

10 Q. Do you have any information of any kind
11 that the ACLU controls this case?

12 A. Any documents?

13 Q. Yup.

14 A. No.

15 Q. Have you seen any pleading in this case
16 that reflects that it was prepared by or in
17 consultation with the ACLU?

18 A. The only thing I've seen on the official
19 documents has been the Plaintiff, Mrs. Dobrich
20 versus Indian River and all of our names it's been
21 signed by you and your law firm, that's all. Have I
22 seen any signature that says ACLU on there, no.

23 Q. Did you think that it was important to find
24 out whether what you were going to say was true

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1 I think the ACLU, my view, my opinion is they are a
2 part of it. Now, if that's not true then okay.

3 Q. You don't care?

4 A. No, it's not that I don't care, I'm saying
5 that's fine if it's not true.

6 Q. But you are going to keep saying it?

7 A. Yes, because I still -- I think I told you
8 yesterday that when I have a belief, if you can show
9 me a piece of paper that says the ACLU has nothing
10 to do with this case as far as consultation or you
11 don't confide or they don't help in any way, then
12 okay. But up until this time nobody has shown me
13 that, and my belief is that the ACLU is still
14 involved in this case.

15 Q. And that's why you keep talking about the
16 ACLU in public?

17 A. Because I don't agree with what the ACLU is
18 doing.

19 Q. All right, I want to talk to you about the
20 text of your statement at the February 27th meeting.
21 The second sentence reads, "The ACLU has an ongoing
22 nationwide campaign to take away the rights of any
23 citizen legislator who speak or pray according to
24 his conscience and religious tradition."

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1 before you raised the big bad wolf of the ACLU in
2 public statements about this litigation?

3 A. I believed it to be true.

4 Q. Do you believe it to be true today?

5 A. Yes.

6 Q. What if I said to you, sir, that I
7 represent Mrs. Dobrich, that I am not in
8 consultation in any way with the ACLU on this case
9 and that my only concern is upholding the rights of
10 my clients in this case, that's it. Would you
11 change your views about that the ACLU was trying to
12 take your rights away in this litigation?

13 A. I wouldn't change my views of the ACLU, but
14 that would be fine, if you are acting on behalf of
15 Mrs. Dobrich that's fine. But my views of the ACLU
16 are still the same.

17 Q. Would you continue to say publicly the ACLU
18 is trying to take my rights away in this litigation?

19 A. Probably so, because that's still the way I
20 feel. I think the ACLU is trying to take some of my
21 rights away as a Christian. And I think --

22 Q. In this litigation?

23 A. And I believe that they are a part of this
24 whether directly or in consultation or whatever, I

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1 I just want to clarify. You believe that
2 the efforts of the Does and Dobriches and of their
3 lawyers, Messers Lenhard, Horvath and myself are a
4 part of that ongoing campaign, am I correct?

5 A. I believe this case is part of an ongoing
6 campaign. Whether you're personally involved in
7 that I don't know, but I think this case --

8 Q. Fine, that's all I need to know.

9 A. Okay.

10 Q. After then two sentences down you say, "Our
11 court case where we have been standing up to the
12 ACLU provides the opportunity for a federal court to
13 permanently uphold my right not to be treated as a
14 second class citizen, or have to move to the back of
15 the bus."

16 A. Uh-hum.

17 Q. When you refer to having to move to the
18 back of the bus, did you have reference to Mrs. Rosa
19 Parks?

20 A. Yes.

21 Q. And do you equate your position here with
22 that of Mrs. Rosa Parks?

23 A. I equate that with the position, that I
24 feel as though some of my rights may be taken away

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1 or denied. And certainly I think that was her main
2 concern that some of her rights were being violated,
3 and so in that way, yes.
4 Q. So your position is equivalent to that of
5 Rosa Parks?
6 A. I don't know if it's equivalent.
7 Q. Why did you use the phrase, "move to the
8 back of the bus," if you didn't think it was
9 equivalent?
10 A. Well, when you say equivalent, equivalent
11 is the same weight. Some people may say that her
12 issue is more important to them than my issue.
13 Q. Not to you, though?
14 A. To me my issue is very important and I also
15 recognize that hers was important, but are they
16 equal, that's a matter of opinion, but I think they
17 are both having to be involved with rights being
18 taken away from individuals or whatever. It's not
19 whether it's equal, it's whether it's of the same
20 nature. In other words --
21 Q. You think that you are in the same position
22 as Mrs. Parks was?
23 A. I think I'm in the position that there's a
24 possibility that some of my rights may be taken

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1 separate water fountain because you're a Christian?
2 A. No.
3 Q. Have you ever been made to leave a lunch
4 counter because you're a Christian?
5 A. No.
6 Q. Have you ever been denied the right to vote
7 because you're a Christian?
8 A. No.
9 Q. Have your children ever been -- has anyone
10 ever sought to convert your children to another
11 religion because you're a Christian?
12 A. I don't know that answer.
13 Q. Do you believe --
14 A. Not to my knowledge, but kids don't also
15 confide, I don't know.
16 Q. Has anyone ever tried to convert you to a
17 religion different than Christianity?
18 A. Yes.
19 Q. Has anyone ever asked you why you were a
20 Christian?
21 A. Yes.
22 Q. Have you answered?
23 A. Yes.
24 Q. And what was your answer?

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1 away, yes.
2 Q. Do you think that you are being
3 discriminated against in the same way that
4 Mrs. Parks was being discriminated against?
5 A. I think I'm being discriminated against
6 because I'm a Christian and I want to pray in Jesus'
7 name.
8 Q. I don't think that was my question. Do you
9 think that you are being discriminated against in
10 the same way as, and to the same degree that
11 Mrs. Parks was discriminated against?
12 A. Well, would you describe to me your opinion
13 of same way?
14 Q. No, sir.
15 A. Okay, then I don't know if I can answer
16 that question.
17 Q. Do you believe that you are discriminated
18 against to the same degree as Mrs. Parks?
19 A. I really don't know how to answer that
20 question.
21 Q. Have you ever have been made to sit in the
22 back of the bus because you're a Christian?
23 A. No.
24 Q. Have you ever been made to drink from a

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1 A. Why am I a Christian?
2 Q. Yes.
3 A. Because on March 27, 1973 I was at a
4 revival meeting and the evangelist that was
5 preaching that night his sermon touched my heart and
6 I went forward and gave my heart to Jesus, and
7 that's why I'm a Christian.
8 Q. And before March 27 what religion were you?
9 A. I had attended a Methodist church when I
10 was younger, but I don't know if I had any -- I
11 wasn't a Christian before March 27, 1973.
12 Q. Anybody ever turn a fire hose or police
13 dogs on you because you're a Christian?
14 A. No.
15 Q. Has anyone ever suggested that you could
16 disappear because you're a Christian?
17 A. To me?
18 Q. Yeah.
19 A. No.
20 Q. Now, I know these words were not written by
21 you, but do you think that for you to equate your
22 position with Rosa Parks was a little over the top?
23 A. No.
24 Q. You think it was an exactly apt comparison?

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1 A. No.
 2 Q. Well, do you think it was an apt
 3 comparison?
 4 A. I think in my mind the comparison that she
 5 had rights taken away from her, and there was a
 6 potential that I was going to have rights taken away
 7 from me. That's how I equate myself to Miss Parks.
 8 Q. All right --
 9 A. To me it's a matter of rights being
 10 withheld, taken away, and in my case it was the
 11 potential of that happening.
 12 At this moment as we are sitting here right
 13 now, as far as I know I have the right to pray when,
 14 where and however I wish. However, I feel as though
 15 that right may be in jeopardy.
 16 Q. Mrs. Parks rights weren't in jeopardy, they
 17 had been taken away, hadn't they?
 18 A. I think she was denied some rights, yes.
 19 Q. Mrs. Parks was being discriminated against?
 20 A. Okay, yes.
 21 Q. You're not being discriminated against, are
 22 you?
 23 A. I am not, but there are Christians
 24 throughout this nation and world that are.

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1 A. Yes.
 2 Q. In each of those cases you knew that
 3 students were there?
 4 A. Yes.
 5 Q. You had no idea whether those students were
 6 all Christian or of other faiths, isn't that
 7 correct?
 8 A. No.
 9 Q. You didn't know if they were Muslim or
 10 Jewish or Agnostic or atheist or whatever?
 11 A. No.
 12 Q. And for the purposes of your position in
 13 this case it doesn't matter, isn't that right?
 14 A. It doesn't matter?
 15 Q. Yes.
 16 A. I wouldn't say it doesn't matter.
 17 Q. Well, explain to me how it matters whether
 18 the students in the audience are Christian or Muslim
 19 or Agnostic or Jewish for purposes of the
 20 infringement of your rights?
 21 A. I guess I just have a -- I'm having a hard
 22 time to understand what your question is. Could you
 23 ask it again?
 24 Q. Sure. It didn't matter whether all of the

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1 Q. That's not what this lawsuit is about, is
 2 it Mr. Helms?
 3 A. I know, I know, but I'm just saying, you
 4 asked me several times about are these things
 5 happening to me and no they're not, but the
 6 potential is there because it is happening in other
 7 places.
 8 Q. I am going to ask one more question then
 9 I'm going to go to a new topic?
 10 A. Okay.
 11 Q. Do you think that the comparison of
 12 Reginald Helms, a white man from Sussex County,
 13 Delaware, to Rosa Parks, a black woman in the south
 14 in the late '50s is an apt comparison?
 15 A. I don't know how to answer that question.
 16 In my mind it's not equal, but it is the same.
 17 That's the best I can come, because I think it's a
 18 matter of rights and although I haven't been fire
 19 hosed, beaten or whatever, it's to me, my opinion,
 20 it's a matter of rights.
 21 Q. I gave you a list of six Board meetings
 22 that since the adoption of the prayer policy, at
 23 which you gave the prayer, in each of those cases
 24 did you pray in the name of Jesus?

1 students are Christian or all the students are
 2 atheist, for purposes of determining whether or not
 3 your rights to pray as you wish are being
 4 compromised, or you are being discriminated against,
 5 does it? The audience doesn't matter, it's you that
 6 matters?
 7 A. I wouldn't say that, I have respect for all
 8 people. I would hope they would have respect for
 9 me. So when you say does it matter, everyone
 10 matters. But I just simply wasn't to be able to pray
 11 the way that I have always prayed since I've been a
 12 Christian.
 13 And if they want to pray, if they are in a
 14 position that they are all called to pray, or they
 15 want to pray, then whatever way they want to pray is
 16 fine. I may not necessarily agree with it, but it's
 17 fine.
 18 Q. If you offered a prayer and a student
 19 walked to the podium said I would like to offer a
 20 prayer, too, what would you do?
 21 A. What would I do?
 22 Q. Yeah.
 23 A. I don't know. That's an honest answer --
 24 Q. All right let's say that -- I'm sorry,

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1 excuse me, I interrupted, I don't like to do that.
 2 **A. I don't know how I would act in that**
 3 **situation until presented to that. I would hope, I**
 4 **would hope that I would be respectful, but I don't**
 5 **know what I would do.**
 6 Q. Well, let me pose a different hypothetical.
 7 Suppose there were 35 students in the audience and
 8 each of them one after another walked to the podium
 9 and said I'd like to offer a prayer, and the Board
 10 members began to look at their watches and said
 11 something's got to be done here, and at some point
 12 it's true, is it not that maybe the first person you
 13 wouldn't say sorry we have got to get on with our
 14 business, but at some point, we can both agree,
 15 can't we, Mr. Helms, that you'd say look I have
 16 enormous respect for your religion and I think it's
 17 wonderful that you're anxious to invoke divine
 18 guidance but we have got to get to the business at
 19 hand?
 20 **A. Well, I'm sitting here thinking as**
 21 **presented with this, one way it might possibly be**
 22 **handled is to say we have a public comment section**
 23 **coming up and if you wish to come to the podium and**
 24 **present a prayer we set aside 15 minutes and each**

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1 **it respectfully and say well, we have a public**
 2 **comment section and as an individual you have two**
 3 **minutes, and you say whatever you want to say,**
 4 **within the guidelines of our policy.**

5 **In other words, they couldn't bad mouth a**
 6 **teacher by name, that sort of thing.**

7 Q. Doesn't the Constitution guarantee the
 8 right to say whatever you want?

9 **A. Well, I think I'm not that familiar with**
 10 **the Constitution law --**

11 MR. ALLINGHAM: That's a legal
 12 question, I will withdraw it.

13 MS.DUPHILY: We are going off the
 14 record at approximately 11:10 a.m..

15 (WHEREUPON a brief recess was
 16 taken)

17 MS. DUPHILY: We are back on the
 18 record at approximately 11:11 a.m..

19 Q. As a School Board member you want this
 20 School Board prayer issue to be decided by the
 21 courts don't you?

22 **A. My opinion, yes.**

23 Q. Do you know who the Does are?

24 **A. No, I don't.**

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1 **individual has two minutes to express themselves in**
 2 **whatever way, maybe that would be the appropriate**
 3 **time. But you know, and handle it that kind of way.**
 4 Q. Isn't the public comment section limited to
 5 matters of Board business?
 6 **A. As far as I know public comment is public**
 7 **comment. It could be -- now you would hope someone**
 8 **wouldn't come to the podium in a School Board**
 9 **meeting and start talking about what happened at the**
 10 **Food Lion. However, we don't tell them what they**
 11 **can talk about and we don't limit them except the**
 12 **policy like we talked about before as far as getting**
 13 **into personalities, bargaining unit types of things.**
 14 **There are limitations there, but we don't tell**
 15 **anyone what to speak about and we don't say you can**
 16 **only talk about School Board issues.**
 17 **I've never heard anyone say, to the best of**
 18 **my knowledge, I have never heard any president tell**
 19 **someone you can only talk about this issue and you**
 20 **can't talk about that. I've never heard that. I**
 21 **would assume everybody knows we are there about**
 22 **School Board business.**
 23 **However, if a student came up and says I**
 24 **want to offer a prayer, I would hope we would handle**

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1 Q. Has anyone told you who they think the Does
 2 are?
 3 **A. I don't recall that, although I have had**
 4 **some people say to me they think they know who they**
 5 **are. But I don't recall anybody telling me**
 6 **specifically who they were. But if they did, I**
 7 **don't remember.**

8 Q. I take it you have done nothing to counter
 9 what people conjecture about, have you?

10 **A. If you are asking me if it's important for**
 11 **me to know who they are, it's not important to me**
 12 **who they are. If they want to remain anonymous**
 13 **that's fine. We had some discussion about should we**
 14 **know who they are, and some people think we should**
 15 **know, but to me I would like to know, but it's not**
 16 **that big a deal to me. So, I have not made any**
 17 **conscious effort to find out who they are.**

18 Q. Do you recall who told you they thought
 19 they knew who the Does were?

20 **A. I believe as I recall I think Mrs. Hobbs**
 21 **may have said she thought she knew who they were, I**
 22 **think Dr. Hattier said he knew who -- he thought, he**
 23 **thought he knew who they were and maybe Mr. Darling,**
 24 **but again I'm not 100 percent sure. But no, do I**

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1 know Mrs. Hobbs knows, she could, and Dr. Hattier
 2 said he thought he knew, whether Mr. Bireley said it
 3 or not, I think he did, but I'm not 100 percent
 4 sure.

5 Q. Whoever said, though, that they knew who
 6 the Does were, they didn't tell you who they thought
 7 the Does were?

8 A. I don't recall that, but if they did I
 9 can't give you a name, I don't know who they are.

10 Q. This is the Southern Delaware School of the
 11 Arts, and you have to audition to be admitted into
 12 the school?

13 A. I believe that to be true.

14 Q. Does the Board have anything to do with the
 15 scheduling of those auditions?

16 A. To the best of my knowledge, no.

17 Q. Yesterday you told me that typically where
 18 the Board concludes that a matter is appropriate for
 19 treatment by a policy that it's appropriate to pass
 20 a policy on an issue, what typically they do is
 21 refer the matter to the policy committee and ask the
 22 Board's attorney to draft a policy, do you remember
 23 that testimony?

24 A. Yes.

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1 of a possible policy, but I don't recall my exact
 2 thoughts. But I did send it to him with the intent
 3 that it was pretty important to looking it over and
 4 see what he thought.

5 Q. Was there any discussion at any time that
 6 you are aware of about whether to adopt simply the
 7 five numbered paragraphs at the end of PX34 or the
 8 longer document that you had sent to Mr. Walls?

9 A. I seem to recall a discussion about the
 10 document as we see here being entirely too lengthy.
 11 I do recall that discussion.

12 Q. And who said that?

13 A. I want say it was Mr. Walls as being chair
 14 person of the policy committee. I'm not 100 percent
 15 sure, but as I recall I think it may have been
 16 Mr. Walls saying that it was too lengthy.

17 Q. Did he say that to you?

18 A. I think he said it to the entire Board as I
 19 recall, I think that's where it was.

20 Q. Was that in response to someone asking what
 21 happened to the longer version that we received from
 22 Mr. Helms?

23 A. I can't recall the specifics. I don't
 24 recall a question of that, but I don't know. It

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1 Q. In this case am I correct that you did not
 2 ask Mr. Griffin to draft a School Board Prayer
 3 Policy?

4 A. I'm not sure whether we asked him or not.
 5 I don't recall.

6 Q. Are you aware of any alternative draft
 7 School Board Prayer Policy that was provided by
 8 anyone to the Board members?

9 A. I am aware of the policy that I sent to
 10 Mr. Walls, I'm aware of that.

11 Q. It's one that you have in front of you?

12 A. Yes, that's correct.

13 Q. And you understand that that one has the
 14 policy that was ultimately adopted as part of it?

15 A. Yes.

16 Q. When you sent PX34 to Mr. Walls that's the
 17 document that you have right there?

18 A. Yes.

19 Q. Did you send it to him thinking in your
 20 mind that it was an example of a School Board Prayer
 21 Policy?

22 A. I sent him the fax to say here is what I
 23 have received and to consider this. And I guess I
 24 can't, I could have thought that this is one example

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1 could have been but I don't recall. It could be.
 2 Q. Aside from the length do you recall any
 3 other concern of what you sent to Mr. Walls other
 4 than the five numbered paragraphs?

5 A. I don't recall any concern about the
 6 wording itself, no. I don't recall any concerns.

7 Q. If you have PX9 and PX34 in front of you, I
 8 have a couple of questions about the two. If you
 9 look at the second to last page of PX34 you will see
 10 that there are cases cited, legal cases cited?

11 A. Yes.

12 Q. Did you read these cases or did you absorb
 13 the summaries that were provided to you?

14 A. You mean did I look at the cases
 15 themselves?

16 Q. Yes, sir.

17 A. No, I did not.

18 Q. Anyone argue that the cases included in
 19 PX34, should be incorporated in the final Board
 20 Prayer Policy?

21 A. Not to my recollection.

22 Q. You did agree with the sentiments expressed
 23 in the contents of PX34 up to the numbered
 24 paragraphs that begin on page four?

53 (Pages 206 to 209)

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1 **A. Are you saying did I agree with all the**
 2 **whereas, that sort of thing?**
 3 **Q. Yeah.**
 4 **A. As I recall I thought it was okay. I**
 5 **didn't read each and every case. So to say did I**
 6 **agree with all of it, I am not sure about it. I had**
 7 **cases but I agree that this was the point of what we**
 8 **had been doing, what is the history, yes.**
 9 **Q. Is it your view that the Indian River**
 10 **School Board has the responsibility for fighting the**
 11 **war on terror?**
 12 **A. The Indian River School Board?**
 13 **Q. Yes, sir.**
 14 **A. Well, I think this again is my opinion, I**
 15 **think that as individuals we are all responsible,**
 16 **you know, it is our job to fight terror. Well, I**
 17 **don't know if that's our job, but as individuals I**
 18 **would hope that all of us are responsible for**
 19 **fighting and protecting.**
 20 **Q. So, I take it you didn't read the legal**
 21 **opinions, the actual cases that are cited in this**
 22 **memorandum?**
 23 **A. No, I did not read all the cases.**
 24 **Q. Or any of them?**

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1 any way how the Board opens its meeting with prayer,
 2 did it?
 3 **A. I don't believe so.**
 4 **Q. Okay. Is it correct that the contents of**
 5 **Board policy BDA.1 was never discussed at a public**
 6 **forum prior to its passage?**
 7 **A. I don't believe it was.**
 8 **Q. Have you as a Board member ever heard about**
 9 **a complaint about religious practices at the**
 10 **Selbyville Middle School?**
 11 **A. Before this case or -- the first time I**
 12 **heard about any claim of Selbyville Middle School**
 13 **was part of this case.**
 14 **Q. This is when this lawsuit was filed?**
 15 **A. Yes.**
 16 **Q. I'm going to show you, but not mark, a**
 17 **document that bears Bates numbers P1614 and P1615.**
 18 **I am not marking it in part because of its nature.**
 19 **It's marked highly confidential for attorney's eyes**
 20 **only.**
 21 **I am showing it to you in order to**
 22 **determine simply whether you saw this document at or**
 23 **about the time of the date, which is October 1,**
 24 **2004, or approximately three months before this**

1 **A. I was looking through this. The Marsh**
 2 **versus Chambers looks very familiar, but I can't say**
 3 **that I read the whole case. That's the only names**
 4 **that jump out, but I don't recall reading that whole**
 5 **case, but I do remember seeing those names.**
 6 **Q. Well, then I will ask you a question about**
 7 **Marsh v Chambers. As you understand Marsh v**
 8 **Chambers does it involve prayers, prayer by School**
 9 **Board?**
 10 **MR. SHAW: You are asking him what**
 11 **his understanding of the case would be?**
 12 **MR. ALLINGHAM: Of course.**
 13 **MR. SHAW: Have you read that**
 14 **case?**
 15 **A. I am not familiar enough with that case to**
 16 **make any comment on it.**
 17 **Q. Would your answer be the same if I asked**
 18 **you questions about all the other cases?**
 19 **A. Yes.**
 20 **Q. Fair enough. This is not a law school**
 21 **test?**
 22 **A. Right. I hope not.**
 23 **Q. The adoption of Board Policy BDA.1 on**
 24 **October 19, 2004, that adoption did not change in**

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1 **lawsuit was filed?**
 2 **MR. SHAW: Do you have an extra**
 3 **copy of that?**
 4 **MR. ALLINGHAM: I have masked out**
 5 **the name at the bottom and I ask that you**
 6 **do not take the mask off.**
 7 **A. I don't recall receiving this letter.**
 8 **Q. Thank you. Do you recall at or about the**
 9 **time of its date, October 1, 2004, being informed**
 10 **that a complaint -- being informed of the substance**
 11 **of a complaint like that?**
 12 **A. No. You mean by Mrs. Hobbs?**
 13 **Q. Mrs. Hobbs or anybody?**
 14 **A. I don't recall that. She may have but I**
 15 **don't recall that.**
 16 **Q. Thank you, may I have it back, please?**
 17 **A. Sure.**
 18 **Q. The next three or four questions have to do**
 19 **with contacts with voters or residents of your**
 20 **district. Has any of your constituents told you**
 21 **that they see this case as about protecting**
 22 **Christian prayer?**
 23 **A. Yes.**
 24 **Q. How many, and again I'm looking for**

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1 ballparks here?
 2 **A. 25 to 50, somewhere in there.**
 3 Q. Has anyone ever told you that they see this
 4 case as about protecting Christian values?
 5 **A. No.**
 6 Q. Has anyone ever told you that they see this, the School Board's Prayer Policy, as
 7 protecting Christian values?
 8 **A. No.**
 9 Q. Has anyone ever told that they see the School Board's prayer policy as promoting
 10 Christianity?
 11 **A. No.**
 12 Q. Has anyone ever told you that they see the School Board's prayer policy as protecting Christian
 13 prayer?
 14 **A. Yes.**
 15 Q. Do you know if any School Board member has
 16 campaigned for election or reelection on the ground
 17 that they support School Board prayer?
 18 **A. Only hearsay.**
 19 Q. What was the hearsay?
 20 **A. I didn't hear the WGND broadcast, but I**
 21 **understand that Mr. Bireley and Miss Wilson was on a**

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1 **A. Our Board meetings are not supposed to be**
 2 **evangelistic meetings or --**
 3 Q. We can all agree on that?
 4 **A. Right. I don't know what the Muslims call**
 5 **their, but this is for School Board business and**
 6 **it's not intended to be a church meeting or anything**
 7 **of that nature.**
 8 Q. Okay, I'm going to give you three examples
 9 of a prayer one by one, and I'm going to ask you
 10 whether in your view interpreting paragraph three of
 11 the Board Prayer Policy you would view them as
 12 prohibited by paragraph three or permitted under
 13 paragraph three, okay?
 14 **A. Yes.**
 15 Q. The first one has previously been marked as
 16 Plaintiff's Exhibit 35. Can you read over Mr. Helms'
 17 shoulder or do you have a copy?
 18 MR. SHAW: I have a copy.
 19 Q. And so the record is clear the prayer is as
 20 follows, Mr. Helms, but follow along with me. Do
 21 not put your trust in princes, in mortal men who
 22 cannot even save themselves. When their spirit
 23 departs they return to the ground. On that very day
 24 their plans come to nothing. Blessed is he whose

1 **program and I believe that that was one of the**
 2 **topics that people were calling in and asking, and I**
 3 **heard that what was told to me was Miss Wilson's**
 4 **comments were not very good. Now, whether she**
 5 **campaigned on that issue or not I'm not sure, but**
 6 **that's the only one I'm aware of that even mentioned**
 7 **it during the elections.**
 8 Q. Have you ever told anyone that you view the
 9 ACLU as anti-Christian?
 10 **A. No.**
 11 Q. All right, look at PX9, that's the Board
 12 Prayer Policy?
 13 **A. Okay.**
 14 Q. And you will see that paragraph three
 15 reads, "Such opportunity shall not be used or
 16 exploited to proselytize, advance or convert anyone
 17 or to derogate or otherwise disparage any particular
 18 faith or belief."
 19 Do you see that?
 20 **A. Yes.**
 21 Q. And that's something that you believe in as
 22 a Board member?
 23 **A. Right. Our -- may I clarify that?**
 24 Q. Yes.

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1 help is the God of Jacob, whose hope is in the Lord
 2 his God, the Maker of heaven and earth, the sea, and
 3 everything in them. The Lord who remains faithful
 4 forever.
 5 He upholds the cause of the oppressed and
 6 gives food to the hungry. The Lord sets prisoners
 7 free, the Lord gives sight to the blind, the Lord
 8 lifts up those who are bowed down, the Lord loves
 9 the righteous. The Lord watches over the alien and
 10 sustains the fatherless and the widow, but he
 11 frustrates the ways of the wicked. For the wages of
 12 sin is death; but the gift of God is eternal life
 13 through Jesus Christ our Lord.
 14 My question -- well, first of all sir, do
 15 you recognize that scripture?
 16 **A. For the wages of sin is death?**
 17 Q. Yes, sir.
 18 **A. Yes, I do.**
 19 Q. Do you recognize the earlier part of the
 20 prayer is taken from scripture?
 21 **A. I recognize, you know, when they refer to**
 22 **the God of Jacob and the maker of heaven and the**
 23 **sea, that type, yes, I do.**
 24 Q. And this is a christian prayer, correct?

55 (Pages 214 to 217)

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1 **A. I would say that's a Christian prayer, yes.**
 2 Q. Is it your view as a Board member that that
 3 is permitted or prohibited by paragraph three and
 4 its contents?
 5 **A. In my mind I would say it'd be permitted**
 6 **because I don't see this -- I don't see this as**
 7 **evangelistic. I see this as just some people pray**
 8 **scripture. Some people sing scripture. But I mean**
 9 **I don't see this as an evangelistic type of a**
 10 **meeting. However, I do recognize some of these**
 11 **scriptures coming from the Bible, yes I do recognize**
 12 **that.**
 13 Q. The second prayer which I want to read for
 14 you, and this is short so I don't have a document?
 15 **A. Okay.**
 16 Q. But I can cut it our and give it to you if
 17 you need to read it. It's as follows: Allah, we
 18 offer you our school bus drivers, we offer you our
 19 superintendent, our administrators, and our
 20 secretaries, we offer you our teachers and our
 21 parents. Finally we offer you our students. Peace
 22 be unto your prophet Muhammad.
 23 Would you view that prayer as permitted or
 24 not permitted by paragraph three of the prayer

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1 permitted by paragraph three of the policy?
 2 **A. Permitted.**
 3 Q. Mr. Helms, you've described generically
 4 what you think would be prohibited by the, by
 5 paragraph three, and I take it that that would be
 6 something that would be evangelical in spirit, is
 7 that right?
 8 **A. That's correct.**
 9 Q. Seeking to convert someone to the religion
 10 of the speaker?
 11 **A. That's correct.**
 12 Q. In your view does the text of such a
 13 prayer, in order to be evangelical, does it have to
 14 say explicitly come on over to our side, join our
 15 religion, join our faith, become a Muslim, become a
 16 Christian, does it have to say those words or can
 17 the evangelical nature of the prayer be inferred
 18 from the rest of its content?
 19 **A. Well, my opinion it gets back to**
 20 **interpretation and how you personally receive a**
 21 **prayer like that. But for me, my opinion if someone**
 22 **were to convince me that or try to convince me that**
 23 **what I was doing was wrong, and I needed to repent**
 24 **and change my ways, or come over to our side, then I**

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1 policy?
 2 **A. I would say that would be permitted.**
 3 Q. For the same reason that you said on the
 4 first one, correct?
 5 **A. Sure.**
 6 MR. ALLINGHAM: Now, I am going to
 7 ask the court reporter to mark as PX45 a
 8 document that bears no Bates numbers but
 9 this prayer is a little bit longer so I'm
 10 going to give it to you so you can follow
 11 along.
 12 (WHEREUPON Plaintiff's Exhibit 45
 13 was marked for identification.)
 14 Q. It reads: Heavenly Father, thank You for
 15 this great occasion, for the work, the effort, the
 16 joys and everything that led up to this point in
 17 time. We thank You for Your guidance in this event.
 18 We pray for Your direction in the lives of each of
 19 these School Board members. We pray that You direct
 20 them into the truth, and eventually the truth that
 21 comes by knowing Jesus. We also pray that You would
 22 be with them at this time. We ask these things in
 23 Jesus's name. Amen.
 24 Would you view that prayer as violative or

1 **think you are stepping over the bounds.**
 2 **To someone else it's a matter of opinion.**
 3 **They may have been, for instance the prayer that you**
 4 **led off with Allah, someone may have been feeling**
 5 **that they are trying to impose the, whatever**
 6 **that is Muslim belief on us, or whatever, I would**
 7 **not.**
 8 Q. Okay, I'm only looking for your
 9 interpretation as a Board member?
 10 **A. I think you step over the line when in your**
 11 **prayer you may include something like and all the**
 12 **heathens sitting out in the audience need to bow**
 13 **down and accept whatever. I think you may be**
 14 **stepping over the bound. I don't know that, but in**
 15 **my mind I would say I don't know if I would say that**
 16 **or not.**
 17 Q. Well, let me just explore that a little
 18 bit, if I am may. If, I will make Dr. Hattier the
 19 villain in this case, I don't mean villain, you know
 20 what I mean by villain, the example. If Dr. Hattier
 21 offered a prayer in which he said at the end of the
 22 prayer, and I pray that the heathen in the audience
 23 recognize the error of their ways and come to Jesus
 24 so that they may join his children in heaven. My

56 (Pages 218 to 221)

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1 question to you is, that's a prayer that you would
2 view as violative of paragraph three?
3 **A. I would view that as a prayer that is very**
4 **dangerously on the edge, and I would need someone --**
5 **see, to me there is a difference between what is**
6 **lawful -- in other words, someone would have to tell**
7 **me whether that lawfully broke the policy. However,**
8 **in my mind I would say I would not say that, and I**
9 **don't know that I would, but perhaps I may say**
10 **something to Dr. Hattier in the form of you know Dr.**
11 **Hattier that might be dangerously close. That's**
12 **something I wouldn't do.**
13 Q. Yes, sir. That raises a couple of more
14 questions. If you viewed a prayer in your judgment
15 as a Board member, because you are charged with
16 enforcing this policy, correct?
17 **A. Right.**
18 Q. If you viewed a prayer offered by one of
19 your colleagues as violating paragraph three what
20 would you do?
21 **A. I would wait till the appropriate time and**
22 **I see that as executive session or whatever, and I**
23 **would like to talk about it.**
24 Q. It is fair to say, is it not, that nothing

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1 believe it was prohibited by paragraph three, there
2 is no provision for punishment of that Board member
3 for violating the policy, is there?
4 **A. Yes and no.**
5 Q. Tell me what you mean by yes and no?
6 **A. Okay. I would say yes there is a provision**
7 **number one if the president felt that they were**
8 **stepping over the line they have the opportunity to**
9 **step in and ask Dr. Hattier to cease. And is there**
10 **no punishment, I would say I don't know. During the**
11 **discussions in executive session I don't know if**
12 **there would be any punishment. We are certainly not**
13 **going to sentence him to jail, or we couldn't**
14 **suspend him from the job because it's not a job, so**
15 **there may be some punishment if you will, to the**
16 **extent we would appreciate it if you didn't do that**
17 **again. Someone may consider that to be punishment,**
18 **I don't know.**
19 **But there are opportunities to step in if**
20 **someone is out of line. The president has that**
21 **responsibility, but also in executive session there**
22 **are discussions that can be had to try to, you know,**
23 **straighten that sort of thing out.**
24 Q. Yes, sir. Where ever the line is drawn,

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1 in this policy would provide a mechanism for a
2 determination to be made that a prayer -- that a
3 prayer which is offered would violate paragraph
4 three in advance?
5 **A. Could you explain that question?**
6 Q. Yeah. There is a mechanism in the policy
7 which if Dr. Hattier, poor Dr. Hattier, if Dr.
8 Hattier had a piece of paper with that evangelical
9 prayer that we have been talking about in his hand
10 and he sits down at the table on the stage and
11 Mr. Bireley says would you like to give a prayer, to
12 open the meeting with a prayer Dr. Hattier, there is
13 no mechanism for you, of any Board member, to have
14 determined whether the prayer on the piece of paper
15 Dr. Hattier holds is violative of paragraph three or
16 not, is there?
17 **A. I think I understand your question and I**
18 **would say no, there is no stipulation that says you**
19 **have to submit your prayer beforehand or someone**
20 **needs to review that and make corrections, no, there**
21 **is no stipulation.**
22 Q. And if Dr. Hattier or any other Board
23 member delivered a prayer that was sufficiently
24 evangelical that you and your colleagues would

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1 whether you use the evangelical rule that you've
2 articulated, or whatever it's drawn, and by whatever
3 standard, you would agree with me, would you not,
4 that the policy imposes limitations on each
5 individual Board member's right to pray as he sees
6 fit? That is to say, it tells you that you may not
7 offer a prayer that proselytizes or seeks to advance
8 or convert anyone or to derogate or disparage any
9 particular faith?
10 **A. I would say that's in the language and**
11 **there again I would have to say it's a matter of**
12 **interpretation. In other words, if I were president**
13 **I have something in my mind that I like I shared**
14 **with you, this might be stepping over the line.**
15 **However, someone else may be president that either**
16 **feels that I was too strict or maybe I wasn't strict**
17 **enough.**
18 **So, as each individual president sits in**
19 **that seat it's their responsibility to adhere to**
20 **these policies the best that him or her knows how.**
21 Q. Yes, sir.
22 **A. So, there may be so differences there.**
23 Q. But we can agree, can't we, that however we
24 interpret it, paragraph three is not just an empty

57 (Pages 222 to 225)

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1 gesture, it has a meaning and it does impose some
2 limitation on the right of individual Board members
3 to pray as they see fit?
4 **A. Yes.**
5 Q. And in fact, Mr. Helms, I don't know if
6 this is your particular faith, but there are faiths
7 in the world in which, in which its adherents are
8 urged to show forth their faith at every
9 opportunity, is that correct?
10 **A. I would say that's correct.**
11 Q. And there are faiths in which we are urged
12 to try to convert people who do not believe in our
13 religion to our religion?
14 **A. Yes, there are religions that do that.**
15 Q. And I'm only inferring this from some of
16 your answers, but I am inferring that you have from
17 time to time been the subject of prayers or the
18 recipient of prayers that the persons who have not
19 yet been saved in the audience should come to God?
20 **A. Rephrase that question?**
21 Q. Have you ever heard an individual say I
22 urge those of you in the audience who have not yet
23 been saved to come to God?
24 **A. No, I have not heard that. As I understand**

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1 this religious faith by the individual Board
2 members?
3 **A. Yes, to the extent that in my opinion it**
4 **means that we are not to hold evangelistic meetings**
5 **or something like that. But yes there are**
6 **limitations in this policy.**
7 Q. So, it's your understanding that the right,
8 the individual right of Board members to exercise
9 their faith as they see fit, is not an unlimited
10 one?
11 **A. I think that would be safe to say.**
12 Q. Okay. Mr. Bireley testified yesterday that
13 his approach to the implementation of the rotating
14 basis that is set forth in paragraph two of the
15 policy was to ask each of the sitting Board members
16 whether they would like to be included in the
17 rotation. Did Mr. Bireley ask you that question in
18 words or substance?
19 **A. In substance, yes.**
20 Q. And in response to that question did you
21 volunteer to be one of the Board members who would
22 be included in the rotation of people invited to
23 give a prayer at the beginning of the meeting?
24 **A. Yes, I told him that if he asked me to pray**

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1 **it, and I am trying to recall, that only happened**
2 **one time and that was at the graduation at Sussex**
3 **Central, and I wasn't there.**
4 Q. Yeah, I apologize, I didn't mean to limit
5 this to School Board meetings. In your life you
6 have heard from time to time prayers in which the
7 speaker urged those in the audience who had not been
8 saved to come to God?
9 **A. Certainly, certainly. I thought you just**
10 **meant in a School Board setting, I'm sorry.**
11 Q. I don't know whether this is true, but have
12 you ever urged someone who was not saved to come to
13 God?
14 MR. SHAW: I'm going to instruct
15 Mr. Helms not to answer that. It's delving
16 into his personal religious beliefs, and
17 it's not at issue in this. Whether or
18 not he has asked people to come to God
19 isn't relevant in this context.
20 MR. ALLINGHAM: Mr. Helms I'm
21 going to respect that instruction, but I'm
22 going to ask the general question.
23 Q. Can we agree that paragraph three of the
24 policy imposes limitations on the free exercise of

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1 **I would be glad to do that.**
2 Q. Does Mr. Bireley let you know in advance
3 when, at which meeting you will be invited to offer
4 the prayer?
5 **A. As I recall almost always, almost. He asks**
6 **you before the meeting it could be five minutes**
7 **before the meeting, it could be a phone call in the**
8 **afternoon, he tries very hard to ask you before the**
9 **meeting if you would like to pray, yes.**
10 Q. And is it your understanding that he does
11 that in order to let you know that if you would
12 prefer not to at that meeting he won't invite you?
13 **A. I don't know. I assume he doesn't want to**
14 **ask you if you want to pray if you don't want to. I**
15 **know Mr. Bireley very well, but I don't know his**
16 **thoughts, but I'm thinking Mr. Bireley does not like**
17 **to embarrass anyone, so if you don't want to pray he**
18 **feels as though he doesn't want to ask you because**
19 **that might embarrass you.**
20 Q. Or put you on the spot?
21 **A. Or whatever, but I don't know what his**
22 **reason is, but I know in my case he always asks me**
23 **before the meeting, some time before the meeting.**
24 Q. Do you prepare a prayer or do you speak

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1 extemporaneously?

2 **A. No, I don't prepare.**

3 Q. Whatever comes to your head?

4 **A. Yes.**

5 Q. I'm showing you what's been previously been
6 marked as PX37?

7 **A. Okay.**

8 Q. I think you have this one, but if you don't
9 let me know. The third paragraph of the article
10 from The Delaware Wave, which was written by Laren
11 Hughes, has a quote from you, actually there is a
12 few quotes in this article, have you from time to
13 time given interviews to Miss Hughes on the topics
14 of this case?

15 **A. This may have been the only one, I'm not
16 sure, but yes, I have talked to her, yes.**

17 Q. And it says, "If we pay them a six-figure
18 number and we settle all these issues and then they
19 drop the lawsuit about prayer, what happens if
20 someone else decides to file suit in three months,
21 he said. We need to take this through the court
22 system, let them make a ruling and take that through
23 the future." Is that an accurate quotation?

24 **A. Yes.**

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1 what we're doing, and I think it needs to be decided
2 by the courts." Is that an accurate quotation?

3 **A. Yes.**

4 Q. Do you feel that Christians have fewer
5 rights than non-Christians in Indian River?

6 **A. At times, yes, I do.**

7 Q. Describe for me why you feel that way?

8 **A. Well, just say for instance a non-Christian
9 within the law can do almost everything they want to
10 do. However, a Christian within the law is limited
11 to they can't -- for instance a teacher cannot open
12 their classroom with a prayer, if they are Christian
13 teacher. As a Christian Board member I'm being told
14 now that for instance if I were invited to speak to
15 the Teachers Association, or whatever, that I should
16 not open that proceeding, or that speech with
17 prayer.**

18 **So, I think in some ways the Christians
19 have been limited, if you will, in my opinion,
20 because of some of the laws that have been passed
21 down by the courts. However, as I said before I am
22 a law abiding citizen, and if they tell me not to do
23 it within school then I will abide by what the law
24 says. However, sometimes I do feel that we are**

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1 Q. And on the next page at the bottom there is
2 another quote from you, "I'm a Christian, so I
3 should be allowed to pray the way I want to pray,"
4 Helms said. I've had some people tell me that it
5 seems like this tolerance issue is a one way street.
6 They want us to be tolerant but they need to be
7 tolerant too." Is that an accurate quotation?

8 **A. Yes.**

9 Q. Is it the fact that you are a Christian --
10 withdrawn.

11 MR. ALLINGHAM: Would you mark
12 that as PX46, please.

13 (WHEREUPON Plaintiff's Exhibit 46
14 was marked for identification.)

15 Q. This is an article by James Diehl of the
16 Sussex Post, dated December 22, 2005. In the fourth
17 column from the left, about halfway down the column
18 you're quoted as follows: "Even though we are
19 Christians we have rights also, and I just feel that
20 sometimes they want to take our rights away from us,"
21 Mr. Helms said. When we had a meeting at the
22 beginning of this issue there was overwhelming
23 support for the Board and their stance on prayer
24 before Board meetings. Our public is in support of

1 **limited, yes.**

2 Q. Just on the two examples that you have
3 given, I want to ask you a couple of questions. The
4 first one you pointed out that a teacher is not
5 permitted under your Board policy to open class with
6 a prayer, a Christian prayer?

7 **A. Right, well I'm not so sure, you say Board
8 policy, I would have to look at it, but I mean we
9 have been told that.**

10 Q. Okay.

11 **A. I think that's what it says.**

12 Q. You don't understand that the Board policy
13 would prohibit that?

14 **A. I think it does, but I would have to look
15 at the exact words.**

16 Q. Is it your understanding that a Jewish
17 teacher could open class with a Jewish prayer?

18 **A. No, as far as I know, I think it's no
19 prayer. In other words --**

20 Q. So, there is no distinction between a
21 Christian and non-Christians on this?

22 **A. Yes, you mean as far as opening with
23 prayer?**

24 Q. Yes.

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1 A. Oh, no, I'm sorry.
 2 Q. Everybody has the same restriction?
 3 A. Same restriction as far as prayer is
 4 concerned, yes.
 5 Q. Jews, Muslims, Buddhists, Christians,
 6 everybody?
 7 A. Whomever, yes.
 8 Q. And that's the same case with the teacher's
 9 meeting issue, correct? If you as a Christian can't
 10 open your remarks with a prayer, it's also true that
 11 a Jewish Board member or a Muslim Board member could
 12 not open his or her remarks with a prayer.
 13 A. To the best of my knowledge that's correct.
 14 Q. Can you think of an instance in which
 15 Christians are treated differently from Muslims, or
 16 Jews or Buddhists?
 17 A. In a school setting?
 18 Q. Yes, sir.
 19 A. Yes, I can. I thought -- one of the things
 20 I thought was very interesting was that in Salisbury
 21 State University, which as I understand is a state
 22 university, it was in the paper that they were
 23 having I want to say, weeks, I don't know if it was
 24 one, two, whatever, they were having instructions on

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1 feel we are discriminated against.
 2 Q. In every instance in which you are
 3 prohibited from praying, is it fair to say that a
 4 Jewish person in precisely your position would also
 5 be prohibited from praying?
 6 A. That's correct.
 7 Q. And a Buddhist person in your position
 8 would also be prohibited from praying?
 9 A. To the best of my knowledge, yes.
 10 Q. And similarly a Muslim person would be
 11 prohibited from praying to Allah?
 12 A. To the best of my knowledge, yes, however
 13 that's why I mentioned the state university
 14 because --
 15 Q. Yes, sir, I'm talking about the Indian
 16 River School District?
 17 A. I know. I don't know -- I use that example
 18 because I don't know what would happen if, for
 19 instance, if someone wanted to teach a class on the
 20 Muslim faith to "familiarize people with how they
 21 think." I don't know what would happen.
 22 Q. Well, let me ask you --
 23 A. I would hope they would be treated the same
 24 as anyone else. However, I'm not blind and I read.

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1 the Muslim faith.
 2 However, my belief is you cannot go in
 3 there and say I want to have one week or two weeks
 4 and instruct your student body on the Christian
 5 faith.
 6 Q. Yes, sir.
 7 A. I don't think you would be allowed to do
 8 that.
 9 Q. I don't know anything about Salisbury
 10 State. I really, for my purposes I have no interest
 11 in Salisbury State. My entire focus and the entire
 12 focus of my clients is on the Indian River School
 13 District.
 14 A. Right.
 15 Q. So, my question was are you aware of any
 16 instance in which Christians in the Indian River
 17 Schools or in matters relating to the Indian River
 18 Schools have fewer rights than non-Christians?
 19 A. There again, it's your interpretation of
 20 non-Christian. A non-Christian to me would be
 21 someone who is an unbeliever, like I was before
 22 1973. And I would be free to do within the law
 23 anything I want. But as a Christian if I want to
 24 pray I can't do that. So, in that aspect, yes. I

1 I know in the United States there is a movement, if
 2 you will, to try to explain to the ones who don't
 3 know about the Muslim faith who they are, how they
 4 think and the kind of life they lead. Is that
 5 teaching people about the Muslim faith, I think so.
 6 But that's only my opinion.
 7 I don't know what would happen if someone
 8 wanted to do that in the Indian River School
 9 District, and if we said no, would somebody want to
 10 come in and sue us because we are being
 11 discriminatory. I would hope they would be treated
 12 as if someone wanted to come in and teach about the
 13 Christian faith.
 14 As I understand it we would not allow that.
 15 So, I would hope we wouldn't allow the Muslims to do
 16 that, however, I don't know for a fact that we
 17 wouldn't do that.
 18 MR. SHAW: Tom, before you ask
 19 your follow-up question could we go off the
 20 record for a second?
 21 MR. ALLINGHAM: Yes.
 22 MS. DUPHILY: We are going off the
 23 record at approximately 12:05 p.m.
 24 (WHEREUPON an off-the-record

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1	discussion was held)	1	the deposition had gone for six hours.
2	MS. DUPHILY: Back on the record	2	MR. SHAW: I will grant you three
3	at 12:05 p.m.	3	more minutes of questioning at this time.
4	Q. Finally, with respect to your last answer,	4	MR. ALLINGHAM: Of course I'm
5	do you recall that the Board recently adopted	5	delighted.
6	something called Real World Examples?	6	MR. SHAW: Granted was the wrong
7	MR. SHAW: I'm going to	7	word to use, I will allow the witness to
8	object to any further questioning of my	8	undergo three more minutes of questioning.
9	witness. The deposition has exceeded six	9	Q. Do you recall that the Board recently
10	hours and we are now going to end the	10	adopted a multi-page document called Real World
11	deposition of Mr. Helms.	11	Examples?
12	MR. ALLINGHAM: How did you time	12	A. I'm aware that they are in the process. I
13	that?	13	think the policy committee is trying to find a place
14	MR. SHAW: It was told to me that	14	to put them, is that correct? That's my
15	the deposition started yesterday at or	15	understanding, that -- those have not come to the
16	before 3 o'clock, I would assume, depending	16	Board to the best of my knowledge to vote to put
17	upon what time you guys finished yesterday	17	them in a certain place.
18	and going forward --	18	Q. Okay --
19	MR. ALLINGHAM: So, you don't now	19	A. But I do know we've been discussing it,
20	what time we finished yesterday?	20	yes.
21	MR. SHAW: I don't have an exact	21	Q. Have you seen the Real World Examples?
22	recollection.	22	A. I did at one time, yes.
23	MR. ALLINGHAM: Well, I've got a	23	Q. Do you recall that there are specific real
24	few more minutes. If you don't know	24	world examples that address the very situation that
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1	exactly that this is a six hour deposition,	1	you just articulated, that is the difference between
2	which I think it is not, when you take into	2	teaching a religion and teaching about a religion in
3	account all the breaks, I urge you to let	3	the context of, for example, a world religions class
4	me finish this deposition. It would be a	4	or the like?
5	terrible waste of time to bring Mr. Helms	5	A. I don't recall the specifics, but I do know
6	back for something as trivial as this.	6	they were in there, yes. Without seeing the
7	MR. SHAW: We can stop running the	7	document I'm not sure what it says.
8	clock now and I would ask the court	8	MR. ALLINGHAM: Subject to the
9	reporter to tell me at what time	9	document requests which I made during this
10	approximately or what time exactly the	10	deposition, Mr. Helms, I've completed the
11	deposition began yesterday.	11	examination and I'm, as I've said to all
12	MR. ALLINGHAM: And are you going	12	the witnesses, I'm grateful for your
13	to then count up all the breaks?	13	patience. I know that it takes time out of
14	MR. SHAW: Breaks are reasonable	14	your day.
15	within the confines of the deposition.	15	A. You are certainly welcome.
16	MR. ALLINGHAM: That's not true,	16	MS. DUPHILY: The deposition
17	it's testimony time.	17	is ending at approximately 12:10 p.m..
18	MR. SHAW: So, will you count up	18	
19	all the breaks?	19	
20	MR. ALLINGHAM: No, it's not my	20	
21	obligation. I have probably three minutes	21	
22	worth of questions left, which we could	22	
23	have completed by now if you weren't,	23	
24	without personal knowledge, asserting that	24	

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